SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 112

MORTON SOBELL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

PETITIONS FOR WRITS OF CERTIORARI AND EXHIBIT THERETO

VOL. I

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 19, 1952.

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[fol. a]

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

against

JULIUS ROSENBERG and ETHEL ROSENBERG, Appellants

STATEMENT UNDER RULE 15(b)

The indictment was returned on January 31, 1951 against Julius Rosenberg, Ethel Rosenberg, Morton Sobell, Anatoli A. Yakovlev, also known as "John", and David Greenglass (R. c, c-1, c-2, c-3). A severance was granted as to Anatoli A. Yakovlev (R. 10) and David Greenglass (R. 218), who pleaded guilty (R. 217).

The trial began before Judge Irving R. Kaufman in the Southern District of New York on March 6, 1951, and was continued on the 7th, 9th, 12th, 13th, 14th, 16th, 20th, 21st, 22nd, 26th, 27th, 28th, and 29th days of March 1951. Judgment was entered on April 5, 1951 (R. r, r-1, s, s-1). Appeal was taken on April 6, 1951 (R. v, v-1).

[fol. b] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

against

MORTON SOBELL, Appellant

STATEMENT UNDER RULE 15(b)

The indictment was returned on January 31, 1951 against Julius Rosenberg, Ethel Rosenberg, Morton Sobell, Anatoli A. Yakovlev, also known as "John", and David Greenglass (R. c, c-1, c-2, c-3). A severance was granted as to Anatoli A. Yakovlev (R. 10) and David Greenglass (R. 218), who pleaded guilty (R. 217).

The original indictment filed August 17, 1950, named as defendants Julius Rosenberg, Ethel Rosenberg, and Anatoli A. Yakovlev, also known as "John" (R. d, d-1, d-2, d-3). The first superseding indictment filed October 10, 1950, named as defendants Julius Rosenberg, Ethel Rosenberg, David Greenglass, Anatoli A. Yakovlev, also known as "John", and Morton Sobell (R. e, e-1).

The trial began before Judge Irving R. Kaufman in the Southern District of New York on March 6, 1951, and was continued on the 7th, 9th, 12th, 13th, 14th, 16th, 20th, 21st, 22nd, 26th, 27th, 28th, and 29th days of March 1951. Judgment was entered on April 5, 1951 (R. t, t-1). Appeal was taken on April 9, 1951 (R. w, w-1).

[fol. c] In United States District Court for the Southern District of New York

Superseding Indictment—Filed January 31, 1951

The Grand Jury charges:

1. On or about June 6, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as "John", David Greenglass and Morton Sobell, the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold and Ruth Greenglass, named as co-conspirators but not as defendants, and with divers others presently to the Grand Jury unknown, to violate sub-section (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States of America.

Overt Acts

1. In pursuance of said conspiracy and to effect the objects thereof, in the District of Columbia, on or about June [fol. c-1] 6, 1944, the defendant Julius Rosenberg visited a building at 247 Delaware Avenue, Washington, D. C.

2. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 15, 1944, the defendants Julius Rosenberg and Ethel Rosenberg conferred with Ruth Greenglass.

3. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, the defendant Julius Rosenberg gave Ruth Greenglass a sum of money.

4. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, Ruth Greenglass boarded a train for New Mexico.

5. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius Rosenberg went to 266 Stanton Street, New York City.

6. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius Rosenberg received from Ruth Greenglass a paper containing written information.

7. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New [fol. c-2] York, on or about January 5, 1945, the defendants Julius Rosenberg and Ethel Rosenberg conferred with the defendant David Greenglass and Ruth Greenglass.

8. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendant Julius Rosenberg gave Ruth Greenglass a portion of the side of a torn cardboard "Jello" box.

9. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 10, 1945, the defendant Julius

Rosenberg introduced the defendant David Greenglass to a man on First Avenue, New York City.

10. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg conferred with the defendant David Greenglass.

11. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg received from the defendant David Greenglass a paper containing sketches of experiments conducted at the Los Alamos Project.

12. And further in pursuance of said conspiracy and to [fol. c-3] effect the objects thereof, in the Southern District of New York, on or about January 14, 1945, the defendant David Greenglass boarded a train for New Mexico.

(Section 34, Title 50, United States Code.)

[fol. d] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JULIUS ROSENBERG, ETHEL ROSENBERG, and ANATOLI A. YAKOVLEV, also Known as "John", Defendants

INDICTMENT—Filed August 17, 1950

The Grand Jury charges:

1. On or about November 1, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, Julius Rosenberg, Ethel Rosenberg, and Anatoli A. Yakovlev, also known as "John", the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold, David Greenglass, and Ruth Greenglass, named as co-conspirators but not as defendants, and with divers other persons presently to the Grand Jury unknown, to violate subsection (a) of Section 32, Title

50, United States Code, in that they did conspire, combine, confederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign nation, [fol. d-1] to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States of America.

Overt Acts

1. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 15, 1944, the defendants Julius Rosenberg and Ethel Rosenberg conferred with Ruth Greenglass.

2. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, the defendant Julius Rosenberg gave Ruth Greenglass a sum of money.

3. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, Ruth Greenglass boarded a train for New Mexico.

4. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius Rosenberg went to 266 Stanton Street, New York City.

5. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius [fol. d-2] Rosenberg received from Ruth Greenglass a paper containing written information.

6. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendants Julius Rosenberg and Ethel Rosenberg conferred with David Greenglass and Ruth Greenglass.

7. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendant Julius

Rosenberg gave Ruth Greenglass a portion of the side of a torn cardboard "Jello" box.

8. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 10, 1945, the defendant Julius Rosenberg introduced David Greenglass to a man on First Avenue, New York City.

9. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg conferred with David Greenglass.

10. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg received from David Greenglass a paper containing sketches of experiments conducted at the Los Alamos Project.

[fol. d-3] 11. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 14, 1945, David Greenglass boarded a train for New Mexico.

(Section 34, Title 50, United States Code.)

[fol. e] In the District Court of the United States for the Southern District of New York

[Title omitted]

Superseding Indictment—Filed October 10, 1950

The Grand Jury charges:

1. On or about November 1, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as "John", David Greenglass and Morton Sobell, the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold and Ruth Greenglass, named as co-conspirators but not as

defendants, and with divers other persons presently to the Grand Jury unknown, to violate subsection (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, *d*onfederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign [fol. e-1] nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States of America.

Overt Acts

(Listing of eleven (11) overt acts identical with those listed in the indictment).

[fol. f] In the District Court of the United States for the Southern District of New York

[Title omitted]

Sobell Notice of Motion to Dismiss Indictment—November 14, 1950

Sirs:

Please take notice that upon the affidavit of Edward Kuntz, duly verified the 14th day of November, 1950, and upon all the proceedings heretofore had herein, the undersigned will move this Court, at a Motion Part for Criminal Causes thereof, to be held at the United States Court House, Foley Square, Borough of Manhattan, New York, N. Y., Room 318, on November 20, 1950 at 10:30 A.M. in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order to dismiss or to quash the indictment herein on the ground that the contents thereof are vague and indefinite and on the further ground that it does not comply with the requirements of Rule 7, Subdivision (c) of the Federal Rules of Criminal Procedure which provides [fol. f-1] that the indictment shall be a written statement of the essential facts constituting the offense charged, and in

the alternative, for an order to inspect the minutes of the Grand Jury herein, and for such other and further relief as to this Court may seem just and proper.

Yours etc., Harold M. Phillips and Edward Kuntz, Attorneys for Defendant Morton Sobell. Office and P.O. Address, 258 Broadway, New York 7, N. Y.

Dated: New York, N. Y., November 14, 1950.

[fol. g] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT OF EDWARD KUNTZ ON SOBELL MOTION TO DISMISS INDICTMENT

STATE OF NEW YORK,
County of New York, ss.:

EDWARD KUNTZ, being duly sworn, deposes and says:

I am one of the attorneys for the defendant Sobell herein, and as such I make this motion to dismiss the indictment as against the defendant Sobell, or if the Court denies the motion, then that such denial should be without prejudice and that this Court in the alternative grant an inspection of the minutes of the Grand Jury to determine if there was presented to that body any legal testimony or any legal evidence justifying the indictment.

In support of the motion I respectfully submit to the attention of this Court the following facts and circumstances:

[fol. g-1] The defendant Sobell was taken into custody on the 18th day of August, 1950 in the City of Laredo in the State of Texas upon a warrant for his arrest issued out of this Court. The warrant was procured upon the affidavit of one Rex I. Shroder, sworn to on August 3rd, 1950. A copy of the affidavit that was served on the said Sobell at the time of his arrest is annexed hereto and designated as "Affidavit of Rex I. Shroder."

As will be seen from a perusal of Shroder's affidavit, he is a Special Agent of the Federal Bureau of Investigation Department of Justice and he charges Sobell on information and belief with violating Section 32 of Title 50 United States Code in that between the dates of on or about July, 1944 and *continuously* thereafter (emphasis mine) up to and including July 16, 1950, in the Southern District of New York while the United States of America was at war he (Sobell) did combine, conspire, confederate, and agree with Julius Rosenberg and others unknown to Shroder to communicate, deliver, and transmit and to attempt to communicate and transmit to the foreign government to wit, the Union of the Soviet Socialist Republics and representatives and agents thereof "directly and indirectly documents, writings, sketches, notes relating to the national defense." The said Shroder in the said affidavit, on information and belief speaks of five "overt" acts "pursuant to the conspiracy and to the object thereof" namely five conversations, between defendant Sobell and defendant Rosenberg in Jan-[fol. g-2] uary and June 1946 and in February and July 1947 and in May, 1948, in the Southern District of New York.

Shroder in his affidavit *fails* to state what are the sources of his information beyond saying that they are "investigations made by me in the course of my official duties." Those investigations are clearly *not sources* of information; they rather are the *methods* by which he reached the "sources" of information. However, on that affidavit he secured a warrant and made the defendant Sobell his prisoner. Sobell waived extradition and accompanied his jailor to New York where he was placed by the United States Commissioner under -100,000.00 bail, in default of which Sobell was incarcerated in the Tombs Prison in New York City where he is still at this moment.

Later and on or about the 13th day of October, 1950 an indictment was handed down by the Grand Jury charging Sobell and others with the alleged crime set forth in the affidavit of Shroder using his identical language but omitting *any overt act whatsoever* on the part of Sobell, although enumerating eleven alleged overt acts by the other alleged co-conspirators with the exception of the one mentioned in the caption of the indictment as one Anatoli A. Yakovlev also known as "John."

A copy of the indictment is attached hereto and designated as "Indictment."

The mere recital of the foregoing shows conclusively that the indictment is vague and devoid of any statement of any [fol. g 3] *facts* to meet the requirements emphasized over and over again in numerous decisions both in this Court and in Courts of other circuits that the accused must be definitely informed by a statement of facts of the charges against him so that he may be enabled to present his defense and not be taken by surprise at the trial. I respectfully urge that an allegation that A, B, C, D, and E, beginning with a date six years ago and continuing up to this time conspired to commit a crime is not a statement of any fact; it is merely a conclusion on the part of the one that drew the charge. The word "Conspired" is the very crime that the indictment by a *statement* of *facts* should indicate that it took place.

In other words, to omit any recital of *facts* pointing to a conspiracy clearly is a failure to meet the requirements set forth in the Federal Rules of Criminal Procedure, Rule 7, Sub-division (c) thereof which reads as follows:

> (c) Nature and Contents. The indictment or the information shall be a plain, concise and definite written statement of the *essential facts* constituting the offense charged." (Italics mine)

I beg leave to emphasize particularly the words "essential facts," because those words make clear that there must be *facts* stated plainly, concisely, and definitely. What facts? Why, those facts constituting the offense charged, says the Rule. In other words, if the offense charged is conspiracy, the indictment must state the essential facts constituting conspiracy. At this juncture I deem it proper [fol. g 4] to advert to the affidavit of Shroder and to point out the odd circumstance that though Shroder swears in that affidavit to five overt acts on the part of defendant Sobell and though we do not know what took place in the Grand Jury room, we must conclude that Shroder (who had no qualms of conscience to make statements under oath upon which he procured a warrant and deprived Sobell of his liberty) either did not have the courage to come and

give proof of his charges under oath before the Grand Jury, or else that he did come before the Grand Jury and that his testimony was so worthless that in the indictment that testimony forms no part of the allegation of any overt act on the part of Sobell. The fact that overt acts *are* alleged against the *other* defendants in the indictment, but nothing of any kind against defendant Sobell, leaves the charge against Sobell, a mere naked statement that he with others committed the crime of conspiracy, without at the same time setting forth *one* minute *fact* from which the crime of conspiracy can be spelled out.

On the argument of this motion I shall ask leave to present a Memorandum of Law, which I believe will sustain my contention that the indictment is bad in substance and should be dismissed or quashed.

But, should this Court take a view of the indictment contrary to what is urged here, it is still true that the Court is given the absolute right to look into the minutes of the [fol. g-5] Grand Jury and in the exercise of its sound discretion, it may permit the defendant or his counsel to examine the minutes of the Grand Jury for the purpose of determining if the testimony brought to the attention of the Grand Jury contains the type of legal evidence of sufficient prima facie validity to justify the finding of the indictment.

Naturally, we are in no position to state just what took place before the Grand Jury, but it does seem reasonable to conclude, from the peculiar circumstances of this case, that a *blunder* was committed in arresting Sobell. That blunder originated basically in a sworn statement by a police officer who apparently was unable by oral testimony to sustain his glib affirmations in that affidavit, and hence the injustice done to the defendant in making him a prisoner under a warrant that would not have been issued if Shroder had not sworn as he did, merely on information and belief to allegations that are not based on facts.

I do hope that this case will not take the course of many others throughout history in which the authorities, that placed human beings in jeopardy of their lives and liberty and did so in consequence of a blunder refused to acknowledge that blunder and instead endeavored to bolster up

their accusations by every means in their power, and at times they even succeeded in their efforts.

Surely, it is right to urge upon the Court to exercise its [fol. g-6] discretion in a case where the wording of the indictment itself is so hazy and devoid of factual allegations and where the affidavit of overt acts is not sustained by the indictment, and where the indictment is silent as to any overt acts of this defendant, to find out if there is really a scintilla of legal proof to justify the finding of an indictment. A defendant in these United States is entitled to the constitutional guarantee of due process; and in a criminal case, the corner-stone of due process is a proper indictment containing facts based on legal proof.

Wherefore, I respectfully ask this Court for an order to quash or dismiss the indictment as against the defendant Sobell, or in the alternative, that the Court order an inspection of the Grand Jury minutes, and for such other and further relief as to this Court may seem just and proper.

Edward Kuntz.

Sworn to before me this 14 day of November, 1950. Claire Cohen, Commissioner of Deeds, New York City.

[fol. h] In the District Court of the United States for the Southern District of New York

[Title omitted]

Sobell Notice of Motion for Bill of Particulars—December 11, 1950

Sirs:

Please take notice that upon the annexed affidavit of Edward Kuntz, duly verified December 11, 1950, upon the indictment and upon the proceedings heretofore had herein, the undersigned will move this Court at a Motion Part for Criminal Causes thereof to be held at the United States Courthouse, Foley Square, Borough of Manhattan, New York City, Room 318, on December —, 1950, at 10:30 A. M. or as soon thereafter as counsel can be heard, for an order directing the United States of America, by its attor-

ney, to file a Bill of Particulars, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, setting forth the following items of information:

[fol. h-1] A. Approximately the date when it is claimed that the defendant Sobell became a part of or party to the alleged conspiracy and the circumstances relating thereto.

B. Was the alleged conspiracy conducted by oral meetings of the defendant Sobell with other alleged conspirators and if so, approximately the dates when and the places where, and with whom those meetings took place?

C. Was the alleged conspiracy conducted by means of the written word, by telegram, or by cable, radio, or by any other sign or language, English or foreign, or by means of documents or writings; and if by any of these m-ans, please state so, furnishing information as to the medium and either furnish copies (photostats preferrable) wherever possible, or make them available to the defendant and his attorneys for inspection thereof.

D. Please state what act or acts were done by defendant Sobell to indicate that he entered into a conspiracy with the defendants, one or more of them, and or with persons unknown, to communicate, deliver and transmit to the Union of Soviet Republics and representatives and agents thereof any documents, writings, sketches, notes and information relating to the National Defense of the United States of America.

[fol. h-2] E. Please state what documents were the object of the conspiracy intended to be charged in the indictment.

F. Please state what writings were the object of the conspiracy intended to be charged in the indictment.

G. Please state what sketches were the object of the conspiracy intended to be charged in the indictment.

H. Please state what notes were the object of the conspiracy intended to be charged in the indictment.

I. Please state what information was the object of the conspiracy intended to be charged in the indictment.

J. Please furnish to the undersigned copies of the documents, and of the writings, and of the sketches, and of the notes, and of the information alleged in the indictment as the aim or purpose of the alleged conspirators to transmit to the foreign power mentioned in the indictment.

K. Such other and further relief as may be just and proper in the premises.

Yours, etc., Harold M. Phillips and Edward Kuntz, Attorneys for Defendant Morton Sobell, Office and P. O. Address 258 Broadway, Borough of Manhattan, New York 7, N. Y.

Dated: New York, N. Y., December 11, 1950.

[fol. h-3] To: Irving H. Saypol, Esq., U. S. Attorney, U. S. District Court, Foley Square, New York, N. Y.

[fol. i] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

AFFIDAVIT OF EDWARD KUNTZ ON SOBELL MOTION FOR BILL OF PARTICULARS

STATE OF NEW YORK,
County of New York, ss.:

EDWARD KUNTZ, being duly sworn, deposes and says:

I am one of the attorneys for the defendant Morton Sobell, herein, and have been such since Sobell's arrival in New York on this charge.

The charge against our defendant is violation of Chapter 50, Section 22, sub-division (a) of the Laws of the United States and he was incarcerated in the Tombs Prison on or about August 22, 1950, and is still there under bail of One hundred thousand dollars.

This case has been set for trial to commence on the 4th day of January, 1951; and unless something unforeseen occurs, the trial will go under way on that day.

My associate attorney, Mr. Harold M. Phillips, and my-
[fol. i-1] self, who will try this case, considered that time was growing short and that it was necessary to look into the facts and circumstances for the purpose of being ready for trial when reached. When we examined the indictment and

studied every word, every comma and period, and every colon closely and carefully, insofar as the indictment relates to our client, Sobell, we were quite at a loss as to the path we should take in the interest of justice and fairness to our client because the harder and closer we studied the text of the indictment the less we found in the way of information as to specific acts to support the indictment as far as our client is concerned. The charge against our client is worded precisely as though it were copied from the text of the Statute; and under the language of the Statute countless circumstances and acts could be brought forth specifically which would fit into the generic charge. Therefore, at the present time, in the absence of information, we are in the position of being obliged to wait until the U. S. Attorney, during the trial, and in the trial, brings forth such evidence as may be available to him, but entirely unknown to us, and then for the first time, we would be obliged to scurry around in the hope of meeting such evidence.

Clearly, no attorneys for the defendant in a criminal charge, especially one of such magnitude as this one, should be placed in such a position and, therefore, I respectfully [fol. i-2] ask this Court, for what we consider a minimum of information to enable us to know what we may be required to meet in all fairness and justice.

The information that we desire is set out briefly in the notice of motion and we, therefore, respectfully ask this Court to make an order requiring the United States of America, by its attorney, to furnish replies to the questions contained in the notice of motion and to furnish such material as is requested in the notice of motion; and for such other and further relief as to this Court may seem meet and proper, for which no previous application has been made of any Judge or Court.

Edward Kuntz.

Sworn to before me this 11th day of December, 1950.
Philip Haber, Notary Public, State of New York.

[fol. j] ANSWERING OF MYLES J. LANE AFFIDAVIT ON SOBELL MOTION FOR BILL OF PARTICULARS

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss.:

MYLES J. LANE, being duly sworn, deposes and says that:

1. I am the Chief Assistant United States Attorney for the Southern District of New York, and as such I am in charge of the above entitled matter.

2. This affidavit is submitted in opposition to a motion by the defendant Morton Sobell, dated December 11, 1950 for an order granting a bill of particulars.

3. The defendant Morton Sobell, together with the other defendants named above, was indicted on October 10, 1950 for a conspiracy to violate Section 32(a) of Title 50, United States Code. The defendants were charged with conspiring to communicate, deliver and transmit to the Union of Soviet Socialist Republics certain information and data relating to national defense. This indictment was one which superseded a previous indictment returned by a Federal Grand Jury for the Southern District of New York on August 17, 1950 against all of the defendants named above, with the exception of Sobell and one David Greenglass. Both indictments are identical with the exception of the inclusion [fol. j-1] of the names Sobell and Greenglass as defendants in the superseding indictment.

4. The primary purpose of an indictment is to apprise a defendant of the crime for the commission of which he is charged, and to inform him of the charge in detail sufficient to enable him to prepare his defense, and to describe the crime charged in detail sufficient to bar a subsequent prosecution for the same offense.

5. The facts set forth in the instant indictment are alleged with particularity sufficient to satisfy the two requisites set forth in paragraph 4 herein, and for this reason a bill of particulars should be denied.

6. The facts sought by the defendant in his bill of particulars are in essence and by their very nature evidentiary, and inasmuch as it is not the function, nor the office of a bill of particulars to require the Government to make a dis-

closure of its evidence before trial, the defendant's request is improper.

7. In request (J) of the defendant's moving papers he has improperly requested that he be furnished with copies of documents, writings, sketches, etc. It is respectfully submitted that such a request can be made only under Rule 16 of the Federal Rules of Criminal Procedure, and as a condition precedent to such a request the defendant must show that the documents "were obtained from or belonging to the defendant or obtained by others by seizure or process". The impropriety of such a request is highlighted by the fact [fol. j-2] that the moving papers are barren of any showing that the defendant has met the requirements enunciated by Rule 16 of the Federal Rules of Criminal Procedure.

8. The Court's attention is respectfully invited to the fact that a motion for a bill of particulars was made by the defendants Julius and Ethel Rosenberg in the original indictment dated August 17, 1950 which is, with the exception of the naming of two defendants, in all respects identical with the present indictment. The Honorable Edward Weinfeld, United States District Judge, in an opinion dated October 6, 1950 denied the Rosenberg motion for a bill of particulars.

In view of these premises your deponent respectfully requests that the motion of the defendant Sobell for a bill of particulars be denied.

(S.) Myles J. Lane.

Sworn to before me this 18th day of December, 1950. Daniel Tanenbaum, Notary Public, State of New York.

[fol. k] In United States District Court

[Title omitted]

Order re Sobell Motion for Bill of Particulars—December 29, 1950

The defendant, Morton Sobell, having moved for a bill of particulars, under Rule 7F.

Now, on reading and filing the notice of motion dated December 1, 1950, and the indictment in the above case,

and the affidavit of Edward Kuntz, duly sworn to December 11, 1950, all in support of said motion, and the answering affidavit of Myles J. Lane, duly sworn to December 18, 1950, in opposition thereto, and after hearing Edward Kuntz, one of the attorneys for the defendant Sobell in support of said motion, and Irving H. Saypol, Esq., United States Attorney (Myles J. Lane, of counsel) in opposition, and after due deliberation, it is hereby

[fol. k-1] Ordered, that the said motion is granted to the extent of directing the Government, and the Government is hereby so directed to file within ten (10) days a bill of particulars under Rule 7F, giving:

1. The approximate date it is claimed defendant Sobell joined the alleged conspiracy, and

2. The approximate dates it is claimed defendant Sobell participated in overt acts committed in pursuance of the alleged conspiracy.

Sylvester J. Ryan, U. S. D. J.

[fol. l] In United States District Court

Motion to re-Argue Sobell Order for Bill of Particulars

January 11, 1951

Upon the annexed affidavit of Myles J. Lane, Chief Assistant United States Attorney for the Southern District of New York, duly verified the 11th day of January, 1951, and upon all the proceedings heretofore had herein, namely, notice of motion of the defendant Morton Sobell, dated the 11th day of December, 1950, and the affidavit of Edward Kuntz, Esq., duly verified the 11th day of December, 1950, for an order for a bill of particulars and the reply affidavit of Myles J. Lane, duly verified the 18th day of December, 1950; the opinion of the Court by the Honorable Sylvester J. Ryan, United States District Judge, filed the 29th day of December, 1950, and an order granting a motion to suppress the evidence and to dismiss the indictment, signed on the 29th day of December, 1950 and filed the 2nd day of January, 1951, it is

Ordered that Morton Sobell show cause before a term of

this Court, held in Room 318, United States Court House, Foley Square, New York City, in the forenoon of January 15, 1951, at the opening of Court on that day, or as soon thereafter as counsel can be heard, why a reconsideration should not be had of the motion for a bill of particulars and upon reconsideration why an order should not be made [fol. l-1] vacating the order granting the bill of particulars; and it is

Further ordered that pending a hearing and determination upon this order to show cause, let the terms of the order signed by the Honorable Sylvester J. Ryan, United States District Judge, and entered in the United States District Court for the Southern District of New York on January 2, 1951, be stayed.

Further ordered that service of a copy of this order, together with the accompanying affidavit, be made upon defendant or his counsel on or before the 12th day of January, 1951.

Dated: New York, N.Y., January 11, 1951.

Henry W. Goddard, U. S. D. J.

[fol. m] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF MYLES J. LANE IN SUPPORT OF MOTION TO RE-ARGUE

STATE OF NEW YORK, COUNTY OF NEW YORK,
Southern District of New York, ss:

Myles J. Lane, being duly sworn, deposes and says:

1. That he is the Chief Assistant United States Attorney for the Southern District of New York, and is thoroughly conversant with the proceedings heretofore had in the above entitled action.

2. That this affidavit is made in support of a motion requesting the Court to reconsider an order made by United States District Judge Sylvester J. Ryan on January 2, 1951, granting a bill of particulars under Rule 7-F to the above named defendant Morton Sobell, to the extent of directing the Government to give the approximate date when it is

claimed the defendant Sobell joined the alleged conspiracy and the approximate dates it is claimed defendant Sobell participated in overt acts committed in pursuance of the alleged conspiracy.

3. The defendant Morton Sobell, together with the other defendants named above, was indicted on October 10, 1950 for a conspiracy to violate Section 32(a) of Title 50, United States Code. The defendants were charged with conspir- |fol. m-1| ing to communicate, deliver and transmit to the Union of Soviet Socialist Republics certain information and data relating to national defense. This indictment was one which superseded a previous indictment returned by a Federal Grand Jury for the Southern District of New York on August 17, 1950 against all of the defendants named above, with the exception of Sobell and one David Greenglass. Both indictments are identical with the exception of the inclusion of the names of Sobell and Greenglass as defendants in the superseding indictment.

4. The indictment as it is drawn apprises the defendant Sobell of the crime of which he is charged and informs him of the alleged crime in detail sufficient to enable him to prepare his defense.

5. The particulars which Judge Ryan has directed the Government to furnish to the defendant Sobell is tantamount to giving Sobell a complete blueprint of the Government's evidence against him. The Court in effect is requiring the Government to set forth the date of every single act which Sobell has performed in furtherance of the conspiracy for as long a period as he was connected with the said conspiracy. As this Court has so frequently held and as the United States Supreme Court has reiterated time and time again, this is neither the function nor the purpose of a bill of particulars.

6. In any conspiracy indictment the Government is re- |fol. m-2| quired to set forth and prove only one overt act. The law is well settled in this respect and it is also well settled that the Government is never required to set forth overt acts involving every defendant involved in the conspiracy. The effect of Judge Ryan's decision is to force the Government not only to allege an overt act with respect to Sobell but to set forth multitudinous acts of Sobell. In

this respect the decision of Judge Ryan is contrary to every principal of law respecting an indictment.

7. Because of the very nature of this case additional evidence is constantly coming to the attention of the Government respecting additional acts performed by Sobell during the course of the conspiracy. It is safe to assume that during the future weeks prior to the trial additional evidence of further overt acts by Sobell will come to the attention of the Government. In the light of this fact the net result of Judge Ryan's decision will be to limit the Government in its proof at the trial and in this respect it will seriously hamper the prosecution of the case.

8. There is no obligation on the part of the Government to set forth each and every overt act performed by a conspirator during the course of a conspiracy, nor is it encumbent upon the Government to prove each and every overt act performed by a conspirator during the course of the conspiracy. The discretion with respect to what evi-[fol. m-3] dence the Government intends to present at a trial is the sole responsibility of the United States Attorney who is in charge of the prosecution.

9. In view of the fact that it is not encumbent upon the Government to allege and prove any more than one overt act, the facts sought by the defendant Sobell in his bill of particulars with respect to other overt acts which may have been committed by him during the course of the conspiracy are in essence and by their nature evidentiary, inasmuch as it is not the function nor the purpose of a bill of particulars to require the Government to make a disclosure of its evidence before trial, the defendant's request and the bill which was granted in conformance therewith is improper and may very well result in a grave injustice to the Government.

Wherefore, it is respectfully requested that this Court order the defendant Morton Sobell to show cause why a reconsideration should not be had with respect to the motion for a bill of particulars and upon such reconsideration why an order should not be made vacating the order granting the bill of particulars and denying the motion heretofore made for this bill of particulars, and that pending the hearing and determination on this order to show cause it is

respectfully requested that the order of Judge Sylvester J. Ryan be stayed pending the determination of this proceeding.

Myles J. Lane.

Sworn to before me this 11th day of January, 1951. Daniel Tanenbaum, Notary Public, State of New York.

[fol. n] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HAROLD M. PHILLIPS IN OPPOSITION TO MOTION TO REARGUE

STATE OF NEW YORK,
County of New York, ss:

Harold M. Phillips, being duly sworn, deposes and says:

He is one of the attorneys for the defendant Morton Sobell and he makes this affidavit in opposition to the affidavit of Myles J. Lane, Esq., submitted in support of a motion to reargue the motion heretofore decided by United States District Judge Sylvester J. Ryan who granted the motion and ordered the service of a bill of particulars by the United States of America.

I respectfully submit that there is nothing in the affidavit of the said Myles J. Lane, Esq. which contains the elements required in a motion to reargue, especially, to reargue a motion addressed to the discretion of the Court such as one for a bill of particulars. The said affidavit of Mr. Lane does not point out what element of law was overlooked by Judge Ryan. It does not contain any new matter that arose since the making of a motion for a bill of particulars, nor does it point out what elements were overlooked by Judge Ryan.

[fol. n-1] The motion was made either on the last day or two days after the date when the bill of particulars should have been served. The longer the delay in serving the bill, the more the defendant will be handicapped in the preparation of his defense. Naturally, we must assume that the United States Attorney realizes that the delay is injurious

to the rights of the defendant Sobell and it is, therefore, hoped that any further delay will be avoided.

I respectfully submit that the motion to reargue should be denied.

Harold M. Phillips.

Sworn to before me this 15th day of January, 1951. Claire Cohen, Commissioner of Deeds, New York City.

[fol. o] IN UNITED STATES DISTRICT COURT

AMENDED ORDER FOR BILL OF PARTICULARS—January 24, 1951

The United States of America, by Irving H. Saypol, the United States Attorney for the Southern District of New York, having moved this Court for an order why a reconsideration should not be had of a previous motion of the defendant Morton Sobell for a bill of particulars and why an order should not be made vacating the previous order of the Honorable Sylvester J. Ryan, United States District Judge, signed December 29, 1950 and filed in the United States District Court for the Southern District of New York, on January 2, 1951, granting the bill of particulars in connection with the indictment herein, and said motion having duly come on to be heard on January 15, 1951 before the Honorable Sylvester J. Ryan, United States District Judge, and upon the affidavit of Myles J. Lane, Chief Assistant United States Attorney, in support of said motion and an answering affidavit in opposition to the motion having been submitted therein and after hearing Irving H. Saypol, United States Attorney for the Southern District of New York, by Myles J. Lane, Chief Assistant United States Attorney, attorney for the United States of America, in support of the motion and Harold M. Phillips, Esq. and Edward Kuntz, Esq., attorneys for the defendant Morton Sobell, in opposition thereto; and on the memorandum decision of Honorable [fol. o-1] Sylvester J. Ryan, United States District Judge, dated January 15, 1951;

Now, on motion of Irving H. Saypol, United States Attorney for the Southern District of New York, attorney for the United States of America, it is

Ordered and Adjudged that reargument of the said motion is granted and it is further

Ordered and Adjudged that the order for the bill of particulars which was granted on December 29, 1950 be modified to the extent of limiting item 2 of the bill of particulars to requiring the Government to state whether they still charge the defendant Sobell with the commission of the overt acts set forth in the complaint before the United States Commissioner; and it is further

Ordered and Adjudged that the bill of particulars be served within five days after the entry of this order and that such particulars are granted only to the extent that they are known to the prosecution when the bill of particulars shall be served; and it is further

Ordered and Adjudged that in all other respects the motion of the United States of America is denied.

Dated 1 24 51.

Sylvester J. Ryan, U. S. D. J.

[fol. p] In United States District Court

Bill of Particulars Re Morton Sobell

United States of America, for its bill of particulars, by Irving H. Saypol, Esq., United States Attorney for the Southern District of New York, alleges as follows:

1. The approximate date when the defendant Sobell joined the alleged conspiracy is on or about June 15, 1944.

2. The Government still charges the defendant Sobell with the commission of the overt acts set forth in the complaint before the United States Commissioner, sworn to on August 3, 1950, on the approximate dates set forth in the aforesaid complaint.

Respectfully submitted, Irving H. Saypol, United States Attorney for the Southern District of New York, Attorney for United States of America.

To Harold M. Phillips, Esq. and Edward Kuntz, Esq., Attorneys for Defendant Morton Sobell, Office and P. O. Address: 258 Broadway, New York 7, N. Y.

[fol. q] In United States District Court

Complaint August 3, 1950

Affidavit of Rex I. Shroder

Approved: Myles J. Lane, Chief Assistant U. S. Attorney

Before: Honorable Edward W. McDonald, United States Commissioner, Southern District of New York

United States of America

v.

Morton Sobell

Complaint

Violation Title 50, Section 31, U. S. C. (1946 edition)

Southern District of New York, ss.

Rex I. Shroder, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, Department of Justice, and, upon information and belief, alleges and charges as follows:

That from on or about July of 1944, and continuously thereafter, up to and including July 16, 1950, in the Southern District of New York, Morton Sobell, the defendant herein, did, the United States of America being then and there at war, combine, conspire, confederate and agree with Julius Rosenberg and others to deponent unknown to violate Section 32 (a) of Title 50, United States Code, in that they did combine, conspire, confederate and agree with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver, and transmit, and attempt to communicate, deliver and transmit to a foreign Government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the national defense of the United States, to wit, documents, writings, sketches, notes and information relating to national defense.

[fol. q 1] Pursuant to the said conspiracy and to effect

the object thereof, the defendant and co-conspirators did commit, among others, the following overt acts:

1. In January, 1946, the defendant Sobell had a conversation with Julius Rosenberg at the Southern District of New York.
2. In June, 1946, the defendant Sobell had a conversation with Julius Rosenberg at the Southern District of New York.
3. In February, 1947, the defendant Sobell had a conversation with Julius Rosenberg at the Southern District of New York.
4. In July, 1947, the defendant Sobell had a conversation with Julius Rosenberg at the Southern District of New York.
5. In May, 1948, the defendant Sobell had a conversation with Julius Rosenberg at the Southern District of New York: in violation of Section 34, Title 50, United States Code (1946 Edition).

The sources of deponent's information and the grounds of his belief are investigations made by him in the course of his official duties.

Wherefore, deponent prays that a warrant may issue for the apprehension of the above-named defendant and that he may be arrested and imprisoned or bailed, as the case may be.

Rex I. Shroder.

Sworn to before me this 3rd day of August, 1950.
Edward McDonald, U. S. Commissioner, S. D. of N. Y.

[fol. r] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JULIUS ROSENBERG

JULIUS ROSENBERG JUDGMENT AND COMMITMENT—April 5, 1951

On this 5th day of April, 1951 came the attorney for the government and the defendant appeared in person and by counsel,

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of conspiracy, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States, while the United States of America was then and there at war. Title 50 Section 34, United States Code as charged. And the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court.

[fol. r-1] It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Ordered and Adjudged that the said defendant, Julius Rosenberg, for the crime by him committed and upon the verdict of the jury in this court, during the week commencing May 21, 1951 be by the United States Marshal for the Southern District of New York executed until dead and the said punishment of death shall be inflicted in the manner and form as provided by the statutes of the United States of America, and in conformity and in compliance with the manner described by the laws of the State of New York.

It Is Ordered and Adjudged that the defendant, Julius Rosenberg, be and he hereby is committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence by the United States Marshal in accordance with the provisions of Section 3566, Title 18, United States Code.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Irving R. Kaufman, United States District Judge.

U. S. District Court, S. D. of N. Y.
Filed April 5, 1951.
Approved. Irving H. Saypol, U. S. Attorney. 4/5/51.

[fol. s] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ETHEL ROSENBERG

ETHEL ROSENBERG JUDGMENT AND COMMITMENT—April 5, 1951

On this 5th day of April, 1951 came the attorney for the government and the defendant app-ared in person and by counsel,

It Is Adjudged that the defendant has been convicted upon her plea of not guilty and a verdict of guilty of the offense of conspiracy, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States, while the United States of America was then and there at war.

Title 50 Section 34, United States Code as charged. And the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

[fol. s-1] It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Ordered and Adjudged that the said defendant, Ethel Rosenberg, for the crime by her committed and upon the verdict of the jury in this court, during the week commencing May 21, 1951 be by the United States Marshal for the Southern District of New York executed until dead and the said punishment of death shall be inflicted in the manner and form as provided by the statutes of the United States of America, and in conformity and in compliance with the manner described by the laws of the State of New York.

It Is Ordered and Adjudged that the defendant, Ethel Rosenberg, be and she hereby is committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence by the United States Marshal in accordance with the provisions of Section 3566, Title 18, United States Code.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Irving R. Kaufman, United States District Judge.

U. S. District Court, S. D. of N. Y.
Filed April 5, 1951.
Approved. Irving H. Saypol, U. S. Attorney. 4/5/51.

[fol. t] UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MORTON SOBELL

SOBELL JUDGMENT AND COMMITMENT—April 5, 1951

On the 5th day of April, 1951 came the attorney for the government and the defendant appeared in person and by counsel

It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Conspiracy, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the U. S. while the United States of America was then and there at war. T50 Sec. 34 U. S. Code as charged, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being [fol. t-1] shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Thirty (30) years.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

U. S. District Court, S. D. of N. Y. Filed April 5, 1951.

Irving R. Kaufman, United States District Judge.

Approved. Irving H. Saypol, U. S. Attorney. 4/5/51.

[fol. u] AFFIDAVIT OF SOBELL IN ARREST OF JUDGMENT

STATE OF NEW YORK,
County of New York, ss:

Morton Sobell, being duly sworn, deposes and says:

I am one of the defendants herein and I make this affidavit in the interest of justice and in furtherance of my rights as an American born and brought up in this country.

On Wednesday, August 16, 1950 at about 8:00 P. M. we had just finished our dinner in our apartment in Mexico City in the United States of Mexico, and while my wife and I were lingering over our coffee there was a knock on the door. My older daughter opened the door and three men burst into the room with drawn guns and bodies poised for shooting; these men did not ask my name, did not say what they wanted. I demanded to see a warrant, or some other legal process. No reply, except some vague charge that I was one "Johnny Jones" and that I robbed a bank in Acapulco in the sum of $15,000.00 was made. Of course, I vehemently denied the charge and tried to show them my papers, visas, etc., to prove that I was no bank robber.

One of the men showed a piece of metal in his hand and [fol. u-1] said they were police. They were dressed in civilian clothes. A fourth man came later. He also was in civilian clothes.

Only about 10 minutes lapsed from the time that they came till they hustled me out, and that was after I insisted on calling the American Embassy; but without being permitted to do so.

They picked me up bodily and carried me down from the fourth floor to the ground floor. In the street I kept shouting for the police. A taxi was hailed and they opened the door; tried to force me into the taxi; when two more men came in and beat me over the head with black jacks until I lost consciousness. I woke up in the taxi and I was stretched horizontally at the feet of the three men.

When the car stopped in front of a building, they ordered me to get up; they told me to get into the building, but not to make a scene or they would plug me. We walked to the elevator; we went upstairs, and, we went into an office.

They sat me down and a slim, tall, dark man came over; he looked at me. I asked him what it was all about: He slapped me in the face and told me that *they* were the ones that were *asking* questions. At that point I discovered that my head was bloody and my shirt bespattered with blood. [fol. u-2] However, they asked me no questions, but they photographed me in several poses. We spent in that building from approximately 8:30 P. M. till 4:00 A. M. At 12:00 midnight, they offered me something to eat; but I had no appetite for food. During all the time no one questioned me. Some persons who identified themselves as officers to guard me chatted with me but expressed ignorance of the reason I was there.

At 4:00 A. M. I was moved into a large four door Packard and seated in the rear with two armed men, one on each side of me. At that moment, the same tall thin man came to the door and spoke to my guards in *English* saying to them "if he makes any trouble, shoot him."

The driver of the car, who apparently was the leader of the expedition, and who answered to the name of "Julio" told me that they were taking me to the Chief of the Mexican police for further action. With a number of stops for one reason or another, we drove on till about 6:00 P. M. At that time Julio tried to make a phone call, or he did make one, and he told me that he was trying to get the Chief of Police. The same thing happened at about 10:00 P. M., and at midnight, on August 17th, telling me that he was trying to make sure that the Chief of Police would be available. [fol. u 3] At about 1:30 we arrived at Nueva Lorado, we stopped in front of a building, and Julio went into the building and returned in about ten minutes and told me that he had spoken to the Chief and that the Chief told him to take me across the border and let me go.

We stopped at the Mexican customs on the Mexican side of the bridge, across the Rio Grande marking the border. No examination was made of my baggage and then we waited around in the car for about ten minutes. Julio returned and we started onward. When we reached the bridge, which as heretofore stated marks the boundary between the U. S. A. and Mexico, our car was flagged. We stopped and the front door opened. A man entered with

a badge in his hand and stated that he was a United States agent and he remained in the car. When we arrived at the United States Customs I was directed to sign a card after they searched my baggage and myself. They handcuffed me and placed me in jail where I remained for five days, after which time I was taken to New York City.

Morton Sobell.

Sworn to before me this 4th day of April, 1951. Sol Paikin, Commissioner of Deeds, New York City. Residing in Bronx City. New York County Clerk's No. 40. Commission expires Sept. 28, 1952.

[fol. v] IN UNITED STATES DISTRICT COURT

ROSENBERGS' NOTICE OF APPEAL—April 6, 1951

Name and address of appellants: Julius Rosenberg, care of Federal House of Detention, West Street and West Eleventh Street, New York City, New York; and Ethel Rosenberg, care of Women's House of Detention, 10 Greenwich Avenue, New York City, New York.

Name and address of appellants' attorney: Emanuel H. Bloch, 270 Broadway, New York 7, New York.

Offense: Conspiracy to commit espionage in violation of the "Espionage Act" (Section 794, Title 18 of the Criminal Code, formerly Section 32(a), Title 50, United States Code, and Section 34, Title 50, United States Code).

Concise statement of judgment or order, giving date, and any sentence: Judgment of Conviction, dated and entered April 5, 1951, by which it was adjudged that the appellants have been convicted upon their plea of not guilty and a verdict of guilty by a jury of the offense mentioned above as charged in the one count and by which it was further adjudged that the above named appellants be committed to the custody of the Attorney General or his authorized representative, to be punished by death, execution of which is to be carried out by the U. S. Marshal for the Southern District of N. Y. on the week of May 21, 1951, and an Order

denying motion for new trial and arrest of judgment, made [fol. v-1] April 5, 1951.

Name of institution where now confined: Julius Rosenberg is now confined in the Federal House of Detention, West Street and West Eleventh Street, Borough of Manhattan, New York City. Ethel Rosenberg is now confined in the Women's House of Detention, 10 Greenwich Avenue, Borough of Manhattan, New York City.

We, the above named appellants, hereby appeal to the United States Court of Appeals for the Second Circuit from the above stated judgment and the order denying the motion of the appellants for a new trial and an arrest of judgment.

Emanuel H. Bloch, Attorney for Appellants.

Dated, New York City, New York, April 6, 1951.

[fol. w] In United States District Court

Sobell Notice of Appeal—April 9, 1951

Name and address of appellant: Morton Sobell, care of City Prison, in the Tombs, 125 White Street, Borough of Manhattan, City of New York.

Name and address of appellant's attorneys: Harold M. Phillips and Edward Kuntz, 258 Broadway, New York 7, N. Y.

Offense: Conspiracy to commit espionage in violation of the "Espionage Act" (Section 794, Title 18 of the Criminal Code, formerly Section 32 (a), Title 50, United States Code, and Section 34, Title 50, United States Code).

Concise statement of judgment or order, giving date, and any sentence: Judgment of Conviction, dated and entered April 5, 1951, by which it was adjudged that the appellant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense mentioned above as charged in the one count and by which it was further adjudged that the above named appellant be committed to the custody of the Attorney General or his authorized representative, for imprisonment for a period of Thirty (30) years, and an

Order denying motion for new trial and arrest of judgment, made April 5, 1951.

Name of institution where now confined: City Prison, [fol. w-1] in the Tombs, 125 White Street, Borough of Manhattan, City of New York.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above stated judgment and the order denying the motion of the appellant for a new trial and an arrest of judgment.

Harold M. Phillips and Edward Kuntz, Attorneys for Appellant.

Dated: New York, N. Y. April 9, 1951.

[fol. 1] United States District Court Southern District of New York

C. 134-245

United States of America

vs.

Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as "John", David Greenglass and Morton Sobell

Statement of Evidence

Before: Hon. Irving R. Kaufman, D.J., and a Jury

New York, March 6, 1951; 10:30 o'clock a.m.

Appearances

Irving H. Saypol, Esq., United States Attorney, and Myles J. Lane, Esq., Roy M. Cohn, Esq., John M. Foley, Esq., James B. Kilsheimer, III, Esq., and James E. Branigan, Jr., Esq., Assistant United States Attorneys, for the Government.

Emanuel H. Bloch, Esq., Attorney for Julius Rosenberg.

Alexander Bloch, Esq., Attorney for Ethel Rosenberg.

O. John Rogge, Esq., Attorney for David Greenglass.

[fol. 2] Harold M. Phillips, Esq., and Edward Kuntz, Esq., Attorneys for Morton Sobell.

(The Court hears prospective jurors who wish to be excused.)

The Court: May I say to the ladies and gentlemen of this panel that I am sure that those of you who are asking to be excused are doing so in good faith, but I again ask you to bear in mind that as citizens of this country you owe a duty wherever possible to serve as jurors when called upon to serve as jurors. Please bear that in mind.

(The Court hears further prospective jurors who wish to be excused.)

The Court: May I say to the ladies and gentlemen again who are asking to be excused that of course I realize that jury service is an inconvenience. We are all inconvenienced while we are here, but again I say that if justice is going to flourish, you and I and all of us are part of the American system of Jurisprudence and you must make some sacrifices to see that that system flourishes.

(The Court continues to hear prospective jurors who wish to be excused.)

[fol. 3] Colloquy Between Court and Counsel

The Court: Gentlemen, I take it both sides are ready.

Mr. Saypol: Yes.

The Court: United States v. Julius Rosenberg, et al. Both sides ready?

Mr. Saypol: I think the indictment should be called and I would then move the case for trial. May the case be called?

The Court: Yes.

(The clerk calls the case.)

Mr. Saypol: The District Attorney moves the case for trial and is ready to proceed.

Mr. A. Bloch: The defendants are ready to proceed.

Mr. Saypol: May the record show the presence of the defendants and their counsel?

The Court: Yes.

Mr. Rogge: May it please the Court, my name is O. John Rogge. I represent David Greenglass. I also represent on the list of Government's witnesses——

Mr. Saypol: Will you suffer an interruption, Mr. Rogge, please?

Mr. Rogge: Yes.

Mr. Saypol: This is procedural and I do not know what will emerge in the discussion and in view of the fact that [fol. 4] there is a panel of jurors present, perhaps it should be discussed at the bench.

The Court: I think that is probably a good idea.

Mr. Saypol: Yes.

The Court: Either that or you can hold it until we impanel the jury.

Mr. Saypol: It is not imminent. I think it can hold.

The Court: Is it a subject that can hold, Mr. Rogge?

Mr. Rogge: I would like to come to the bench, if your Honor please.

Mr. Saypol: Very well.

The Court: All right.

(The following discussion took place at the bench.)

Mr. Rogge: As I have previously indicated to the Government I represent four people. I have only named two of them, David Greenglass and Ruth Greenglass, his wife. I also represent Mr. and Mrs. Elitcher, if and when they are called as witnesses and they are willing to answer to the extent of their knowledge any questions that may be put to them.

I would like with the Court's permission to make an [fol. 5] arrangement with counsel that if and when these four named individuals are called——

Mr. Saypol: Whom are you speaking of now, if you will suffer an interruption, Mr. Rogge? The two Greenglasses and who else?

Mr. Rogge: Mr. and Mrs. Elitcher.

Mr. Saypol: Do you represent them, too?

Mr. Rogge: Yes; if and when they are called as witnesses I ask that I be notified so that I may be in attendance and that at all other times I may be excused from attendance in the case.

Mr. Saypol: The question of Mr. Rogge's attendance I take it is a matter of discretion for the Court. I have no objection to it. The question of notifying him is a matter of convenience and we will try to tell him.

The Court: All right. Also, Mr. Rogge, you are a very busy lawyer; let us assume that the Government is ready to call them and you happen to be out of town or something of that character. Will someone from your office ——

Mr. Rogge: Yes. If someone from my office is not available—I will add this: If I can't be available myself or someone else from my office, the trial may go ahead.

[fol. 6] Mr. Saypol: There are only two questions, if they are questions: First, the question of violating any possible direction of the Court that all of the witnesses be excluded: I take it in that respect the defendant Greenglass, even though he has pleaded, nevertheless he has a right to have his counsel present. As far as the witnesses are concerned, I doubt that counsel would have a right to inject himself into any proceedings that may transpire. Nevertheless I would have no objection.

Mr. Rogge: That is agreeable.

Mr. E. H. Bloch: There is one thing that bothers me a little bit. Amongst the list of witnesses are the names of Mr. Rogge and one of his associates. If I am right in assuming that the Court is going to follow the usual practice of excluding all witnesses from the court there necessarily would be an exception made if Mr. Rogge were permitted to be present while his client Mr. Greenglass as well as Mr. Greenglass' wife and the other two witnesses he mentioned were testifying.

Mr. Rogge: I am asking for that.

Mr. E. H. Bloch: I would just like to state this: What I surmise about the way the case is going to shape up is that I think one of the important elements will be the credibility of the Greenglasses, and in connection with trying to im-

[fol. 7] peach their credibility my client's rights may be jeopardized if you are permitted to stay here in the court because there may be—I am not at all sure of this and I am making no accusations or implications in what I say—discrepancies between your testimony and the testimony of your clients, especially in terms of whether any promises

were held out to your client by the Government authorities, whether any immunity was granted either directly or indirectly.

Now that is what is bothering me, your Honor, and the more I think of it, the thought is germinating in my own mind, I honestly feel that Mr. Rogge's presence might be prejudicial.

Mr. Rogge: If your Honor please, it is in your Honor's discretion. I am a member of the bar of this court. I represent David Greenglass and I ask your Honor if you do rule that witnesses are to be excluded that I nevertheless — on these four people I represent and especially David Greenglass who is named as a defendant in the case, that I be permitted as his counsel to be in attendance.

The Court: I think I get your point, Mr. Bloch. However, it is really not of great significance for this reason: What you are concerned about is that Mr. Rogge who may be called as a witness will have listened to the testimony and [fol. 8] therefore be able to have his testimony jibe with that of the witnesses. Even though he were excluded it can be done anyway. All he would have to do was to send a representative to sit in the back of the courtroom.

Mr. E. H. Bloch: I think from a pragmatic viewpoint your Honor is right, but I wanted to articulate my worry about the matter.

The Court: I get your worry, but I think you will agree with me.

Mr. Saypol: I don't think it approaches the point of substantiality. Mr. Rogge is a member of the bar. The question is one entirely in the discretion of the Court. There have been instances where a direction of that kind has been violated. At most it has been held to be contemptuous and does not affect the merits. There are cases where the Court, as I expect in this case, permit the agents in the case who have investigated it to remain in the court.

The Court: Yes.

Mr. Saypol: I take it that that is on the basis that they are men of integrity who have taken an oath, and I think the same applies to a member of the bar.

Mr. E. H. Bloch: I think the more I think of it, the more I realize that my very reservation might cast some

[fol. 8-A] doubt on the conduct of Mr. Rogge and I don't want that implication to be left on the record. I will say this: The more I think of it the more I am inclined to withdraw any objection I may have.

The Court: All right. Let us go.

(The following proceedings were had in the presence of the panel.)

[fol. 9] Mr. Saypol: I take it I may proceed then, if the Court please? I have certain motions to make.

The Court: All right.

Mr. E. H. Bloch: If the Court pleases, will you suffer an interruption for one moment? As I disclosed to the Court the other morning, I also have a motion addressed to the indictment.

The Court: Well, I don't want you to make it in the presence of the panel. I would rather have you hold it and it can be held until after the jury is selected. You will then make your motion outside the presence of the jury, and I will rule on it.

Mr. E. H. Bloch: Well, will the Court permit my motion to be made now outside the jury's presence, because my motion goes to the heart of the indictment, and if granted by the Court there will be no necessity to impanel the jury. I think the Court did that in one other case recently, and I am going to ask for the same procedure.

The Court: Well, will it take you very long to make your motion?

Mr. E. H. Bloch: I would like to elaborate on one point. There are three points.

The Court: I think it makes no difference, it really makes no difference. It is just by mere chance that it was done in that fashion there.

[fol. 10] Mr. Saypol: There is this difference between us. Mr. Bloch's motion is on the merits. I address myself to the procedural merits.

The Court: I am not talking about your motion. He is talking about the fact that that was done in another case prior to the impanelment of the jury. There was, if you remember, a mere pro forma motion made at the bench and I reserved decision and we proceeded.

Mr. E. H. Bloch: That is correct. This is not a pro forma motion. I am advancing it in the most seriousness, and I suppose under rule 12, the motion that I am making, attacking the jurisdiction of the Court and the validity of the indictment, is reserved to the defendants, to be made at any time.

The Court: Right.

Mr. E. H. Bloch: And "at any time", I assume, includes at the beginning of a trial, when the case is called for trial.

The Court: The Court may entertain it at any time.

Mr. E. H. Bloch: Yes, that is correct.

The Court: I will entertain it after we impanel the jury.

MOTION TO SEVER AND GRANTING THEREOF

Mr. Saypol: The Government will move to sever as to the defendant Anatoli A. Yakovlev.

The Court: Motion granted.

[fol. 11] Mr. Saypol: The record should state, as required by the Federal Rules of Criminal Procedure and the statute——

The Court: Before you go into that, apparently from something that was said by Mr. Rogge here this morning, Mr. Greenglass is not standing trial also.

Mr. Saypol: I would rather reserve that and make a motion in that respect, or address myself to that in the absence of the jury.

The Court: All right, go ahead.

Mr. Saypol: The record should show compliance with the rules, and in compliance with various provisions of statutory law, I take it that the defendants will so concede, first, that they have received copies of the indictment; secondly, that they have received copies of the venire; and finally, they have received a copy of the list of witnesses to prove the indictment, all in due compliance with the statutes.

May we have that concession?

Mr. E. H. Bloch: I will concede that the defendants have been duly served with a copy of the indictment. I am not at all sure that I can concede in the form of "duly received" a copy of the list of witnesses or a copy of the panel, because I was served those in piecemeal, and the last batch of panel prospective jurors as well as additional witnesses

[fol. 12] I don't believe was served on these defendants within the three days or outside the three-day statutory period, but I am going to waive that so there is no dispute about the matter.

The Court: All right. In other words, all counsel agree that Section 3432 of Title 18 was complied with.

Mr. E. H. Bloch: Correct.

The Court: All right. Just before calling of the jurors we will take a short recess.

Mr. E. H. Bloch: If the Court pleases, before we take a recess, if you will remember, the other afternoon we addressed an application to your Honor with respect to the number of peremptory challenges.

The Court: Oh, yes, I will deal with that selecting the jury.

Mr. Saypol: May I just supplement that before we adjourn? I take it the concession made by Mr. Bloch will be joined in by Mr. Phillips?

The Court: Oh, yes, all counsel.

Mr. Phillips: That is correct.

(Short recess.)

The Court: Gentlemen, on the matter of challenges, I will hand to the clerk a sheet, indicating the manner in which the challenges are to be exercised, that is, the rounds [fol. 13] in which they are to be taken. The defense will have 30 challenges and the Government will have 20 challenges.

Will you hand this down (handing)?

I may state that the law provides that both sides, in the ordinary case involving this type of punishment, have 20 challenges each, but the Court in its discretion may enlarge only that of the defense, not of the Government. In view of the fact that there are several defendants on trial, I have enlarged yours by 10 challenges.

(Panel of jurors sworn by the clerk.)

Mr. Saypol: Will your Honor suffer an interruption? For purposes of clarification, perhaps the order of challenges which the Court has directed might be made a part of the record?

The Court: Yes.

Mr. Saypol: I shall offer my copy as a Court's exhibit, and I should also ask the Court for what apparently is intended as a direction that challenges on the part of defendants shall be exercised jointly.

The Court: That is correct.

Mr. Saypol: Will you mark this as a Court's exhibit.

(Marked Court's Exhibit 1.)

Mr. Saypol: The Court's Exhibit in effect provides that there shall be eight rounds, three on the part of the defend- [fol. 14] ants, two on the part of the Government. There shall be a ninth round, three on the part of the defendants, one for the Government, and thereafter there shall be three rounds, one apiece to each side.

The Court: That is correct.

The Clerk: Will jurors kindly take their seats in the jurybox as their names are called.

(Richard H. King, John Cuff, Jr., Donald E. Layman, Joseph E. Jordan, George M. Melinette, George D. Philbrick, Paul A. Piper, William H. Fritz, Charles M. Boyle, Victor Miclo, Louis Friedlander, Monroe W. Fleck, prospective jurors 1 to 12, respectively, took their seats in the jurybox.)

VOIR DIRE EXAMINATION OF JURORS

The Court: To the gentlemen in the jurybox and to the ladies and gentlemen in the courtroom, I shall attempt to speak loud enough so that all of you can hear my questions.

Now, I will address certain questions to the jurors, and the purpose of these questions is to elicit such information from the jurors that would bring out any bias or any sympathy or any prejudice against either side, if such exists; and if in my questioning you feel that there is something that you ought to reply to, don't hesitate to make the answer.

To those who are not in the jurybox, I ask you to merely [fol. 15] make a note of the particular question, that will require an answer if you are ultimately put into the jurybox, so that when you are put into the jurybox you can volunteer your reply to that particular question.

To those actually in the jurybox, why, you will reply to the particular question by indicating that you have an answer; just raise your hand and I will ask you to answer to it.

Now, I believe that I can make my purpose clear in the questioning of the jurors by telling you what has been stated by me on a previous occasion to a panel of jurors and by another judge.

It is our purpose and object to secure a jury that has no feeling, no bias, no prejudice as to either side of this controversy. To put it another way, the minds of the jurors should be the same as a white sheet of paper with nothing on it, with respect to this case, and you should only take the testimony as it comes from the witnesses and from no other source.

It is the object of this Court to select jurors who will keep their minds open during the entire trial and at no time during the proceedings to say, "Now, I know what I am going to do." If a juror takes that position, he might just as well go home and come back when the matter is submitted. Now, that is important. A piece of evidence might come in [fol. 16] later that will change your opinion one way or the other, and that is why it is important that your minds remain open until all the evidence is in, until you have heard the summations of counsel and until you have heard the charge of the Court. If you don't do that, you might have such pride of opinion that it may ca-se you to adhere to a position which you took in the early part of the trial and your minds would hence be closed.

Now, this is a court of justice. Why I emphasize that you should only make your determination on the evidence as it comes from the witnesses, is because that is distinguished from gossip or newspaper talk or so on. That does not belong in a court of justice.

The grand jury has returned the indictment that will be read to you ultimately. I want you to know at the outset that the indictment is not evidence of guilt and should be entirely disregarded by you as evidence. It is merely a method by which the Government calls into a court of justice individuals who they claim have violated the law, and that is a method by which that individual or individuals, or those individuals are advised of the charge which they are required to meet.

Now, the defendants are presumed to be innocent until it is established beyond a reasonable doubt that they have [fol. 17] offended against the law, as charged in the indictment. The defendants stand before you as any individual in

this Court and clothed with that presumption all through the trial.

In asking the questions that I am about to put to you, I don't want you to think that we are curious about your personal affairs or that we are trying to embarrass you or that we haven't any good purpose in putting these questions to you, because that is not the case at all.

Now, if there is some member of this panel who hasn't heard what I have already stated, I wish you would raise your hand.

I take it that everybody has heard it.

My first question: Do any of you know or have any of you had dealings, directly or indirectly, with J. Howard McGrath, the Attorney General of the United States, Irving H. Saypol, the gentleman seated right here, the first gentleman?

Mr. Saypol: Shall I rise?

The Court: The United States Attorney for the Southern District of New York.

Mr. Saypol: I suppose I should present myself to the balance of the panel.

The Court: That is right. This is Mr. Saypol, ladies and gentlemen.

[fol. 18] Mr. Myles J. Lane, would you rise, please?

(Mr. Lane rises.)

The Court: Mr. Roy M. Cohn.

(Mr. Cohn rises.)

The Court: Mr. James B. Kilsheimer.

(Mr. Kilsheimer rises.)

The Court: And Mr. John M. Foley.

(Mr. Foley rises.)

The Court: I take it by your silence none of you knows Mr. McGrath or any of these gentlemen who have risen.

Now, do any of you know any other assistants to Mr. Saypol, or any employees of the United States Attorney's office or any associates of Mr. McGrath?

The stenographer will note from here on in that where there is no reply the answer is in the negative.

Does any juror know or has he had any dealings, either directly or indirectly, with Mr. Alexander Bloch? Mr. Bloch represents——

Mr. A. Bloch: Ethel Rosenberg (rising).
The Court: —Mrs. Ethel Rosenberg.

(Indicated in the negative.)

The Court: Mr. Emanuel H. Bloch?
Mr. Bloch: (Rising). Representing Julius Rosenberg.

(Indicated in the negative.)

Mr. E. H. Bloch: I might say at the outset, at this time, [fol. 19] that I notice on the panel the name of one individual with whom I had court litigation in an adversary position. His name is Leo Mercer, and I thought that it might save the time of the Court if——

The Court: No, you can't do that. You have to go through the entire wheel and dig them up.
Harold M. Phillips and Edward Kuntz, please rise.

(Mr. Phillips and Mr. Kuntz rise.)

Mr. Phillips: We represent Mr. Morton Sobell.
The Court: Very well.

(Indicated in the negative.)

The Court: Do you know anyone who is associated with the defendant in this case?

(Indicated in the negative.)

The Court: Does any juror know or has he had any dealings, either directly or indirectly, with the defendants, Julius Rosenberg?
Will you rise, please, Mr. Rosenberg.

(Mr. Rosenberg rises.)

The Court: Ethel Rosenberg.

(Mrs. Rosenberg rises.)

The Court: Morton Sobell?

(Mr. Sobell rises.)

The Court: You may be seated.

(Indicated in the negative.)

[fol. 20] The Court: I take it the answer is No.

Does any juror know, either directly or indirectly, or has he had any dealings with Anatoli A. Yakovlev, who is not in court, and David Greenglass, not in court at the present time?

(Indicated in the negative.)

The Court: Now, do any of you know any of the judges of this Court or any employees of the Court, or any of the families of the judges or employees of the Court?

(Indicated in the negative.)

The Court: Are you, or any of the members of your immediate families or friends employed by or connected with the Federal Bureau of Investigation, or any police department or other law enforcement or investigating agency, whether public or private, or friendly with any employee of those agencies or departments, or any employee of the Justice Department?

(Prospective juror No. 2 raised his hand.)

By the Court:

Q. This is juror, Mr. Cuff?

A. That is right, sir. I have a brother who is a policeman in a small town.

Q. A brother?

A. That is right.

Q. What town is he a policeman in.

A. Elmsford.

Q. Elmsford, New York?

A. That is right.

[fol. 21] Q. Would the fact that he is a policeman in any way prevent you from keeping your mind open until the entire case is in and rendering a verdict based upon the evidence?

A. It wouldn't have any effect on me.

Juror No. 5 (Raising hand).

By the Court:

Q. Mr. Melinette?

A. I have a neighbor who is with the Federal Bureau of Investigation.

Q. Where do you live?

A. Scarsdale, New York.

Q. Would the fact that this man is your neighbor in any way embarrass you from serving in this case or in any way prevent you from rendering a verdict based on the evidence?

A. I don't believe so.

The Court: Very well.

Have any of you ever given any information to the Federal Bureau of Investigation or otherwise had any dealings with the Federal Bureau of Investigation?

(Prospective jurors indicated in the negative.)

The Court: Are any of you employees of the Government, or do you have members of your immediate families who are employees of the Government?

Juror No. 5: (Raising his hand.)

By the Court:

Q. Yes, Mr. Melinette?

A. I am employed by the Port of New York Authority. [fol. 22] That is strictly government, government agency.

The Court: All right, anybody else?

(Prospective jurors indicated in the negative.)

The Court: Have any of you been employed by the Government in the past, or are any of you now seeking employment, or do you intend to seek employment with the government, or are any members of your families covered in that category?

(Juror No. 4 raised his hand.)

By the Court:

Q. Mr. Jordan?

A. I was employed by the City of New York in the Police Department many years ago.

Q. How long ago was that?

A. 13 years.

Q. In what capacity?

A. As a policeman, patrolman.

Q. What have you done since?

A. I was with the New York Central Railroad, and I am in charge of a department in a brokerage concern at 11 Wall Street.

Q. Now would your association with the New York Police Department or has your association with the Police Department of the City of New York done anything with respect to embedding in your mind any particular type of prejudice, and would you be prevented from keeping your mind open until all the evidence is in?

A. No, sir.

[fol. 23] The Court: Have you ever been, or are you now employed by any firm or company, engaged in production under contract with the Federal Government?

(Prospective Juror No. 8 raises hand.)

By the Court:

Q. You are Mr. Fritz?

A. Yes.

Q. What company is that?

A. National Carbon Division of Union Carbide, and we have a certain number of Government contracts.

Q. Now, would the fact that your company has these Government contracts in any way embarrass you from serving on this jury and prevent you from rendering a verdict based on the evidence and the evidence alone?

A. No, sir.

Q. You believe you could hold your mind open entirely through the entire case?

A. Yes.

(Prospective Juror No. 10 raises hand.)

By the Court:

Q. You are Mr. Miclo?

A. Miclo. I don't know whether the New York Telephone Company is connected with the Government.

Q. I think that is a fair assumption that they probably do some war work. Does that association with the New York Telephone Company in any way embarrass you from sitting on this case?

A. No.

[fol. 24] Q. You feel you could keep your mind open and render a verdict based on the evidence?

A. Yes.

The Court: Anybody else?

(Prospective Juror No. 1 raises hand.)

By the Court:

Q. Mr. King?

A. I work for the General Drafting Company, which produces maps, and I believe it has some contracts with the Federal Government.

Q. Do you feel that that fact would in any way embarrass you?

A. No.

Q. You feel you could hold your mind open, also?

A. Yes.

The Court: Very well.

Have any of you ever served as a juror in a criminal case before?

(Jurors indicated in the negative.)

The Court: Have you ever appeared as a witness for either side in a criminal case?

(Jurors indicated in the negative.)

The Court: Does any member of the panel have any interest in any case that is now pending in this court? By that I mean, are you a litigant or are you expected to be a witness in any case?

(Jurors indicated in the negative.)

The Court: Has any juror or member of his family or [fol. 25] personal friends been a party to any legal action or dispute with theUnited States or any of its offices, agents or employees, or had any interest in any such legal action?

(Jurors indicated in the negative.)

The Court: Do you know O. John Rogge of 401 Broadway, or any members of his firm, namely, Herbert Fabricant, Murray Gordon or Robert Goldman?

(Jurors indicated in the negative.)

The Court: The following persons will be called as witnesses for the Government in this case.

Mr. Schaefer, would you please read them.

Now just listen to the list of witnesses.

The Clerk: The following persons will be called as witnesses for the Government in this case:

Abraham Jacob Surovell
Evelyn Cox
Mark Page
Louise Sarant
Florence Cohen
Max Miller
Arthur Barr
Stella Page
Stanley Rich
Dorothy Abel
Dr. Harold C. Urey
Kathryn Kearns
Procuro Lopez
Gen. Leslie R. Groves
Sarah Powell
Leopoldo Morales
Edward Hillman
Max Elitcher
[fol. 26] Helene Elitcher
Perry Alexander Seay
Emanuel Schwartz
Karl G. Brierley
Mrs. Ruth Greenglass
Mr. & Mrs. W. B. Freeman
Harry Gold
Pedio Boston
Elizabeth T. Bentley
Rolando Leal
John A. Harrington
Eleazer Bromberg
Burrell A. Parkhurst
John W. Lewis
Guillermo Salvidar
Frank Wilentz
Dr. George B. Kistiakowski
Fletcher Brumit
William Danziger
Solomon H. Bauch
Rose Sobell
Edith S. Levitov
Samuel Levine
Walter S. Koski
Morris Pasternak
Edward J. Garrett
Ruth Alscher
Louis Pasternak
Max L. Hart
David Greenglass
Lan Adomian
Rex I. Shroder
James S. Carey
George C. Hargrove
William F. Norton, Jr.
Ben Zuckerman
Florence Pasternak
Ross C. Merritt

Harry D. Belock	Robert E. Rugen
Dr. J. Robert Oppenheimer	Hugh Holland
Alicia Perez Bridat	H. K. Calvert
R. Garza Ramon	Jaime H. Roberts or
James P. Lee	Glenn Davis
Manuel Giner de Los Rios	John Landsale, Jr.
Minerva Bravo	Thomas O. Jones
Ann H. Sidorovich	John A. Derry
John A. Derry	Louis Sobell
Jose Luis Brocado Vendrell	Dora Bautista
O. John Rogge	Mervin Isaacs
David Levitov	Herman Einsohn
[fol. 27] Charles X. Oursler	Vivian Glassman
Richard R. Murray	Sylvia Danziger
George Bernhardt	Herbert Fabricant
Mrs. Helen R. Pagano	Helen D. Schmutz
William Perl	Dr. Anoch Lewert
Louis Abel	Kenneth K. Bowman
Michael Sidorovich	Wendell Marshman
Ralph Carlisle Smith	Mr. & Mrs. Herbert Feinberg
Diana Einsohn	John Fitzpatrick
Henry Aldrich	Andrew Walker

[fol. 28] The Court: Now, does any member of the jury know any of the persons whose names were called and who will be witnesses in this case?

Prospective Juror No. 3: Does that mean know of them?

The Court: No. Know the person. When you say know of them I take it you refer to names you have heard or read about. We will deal with that a little later.

Prospective Juror No. 3: Yes.

The Court: I am dealing now with know. The answer is no, is it?

Prospective Juror No. 3: Yes.

The Court: Mr. Schaefer will now read to you the indictment in this case.

The Clerk: The Grand Jury charges:

1. On or about June 6, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as "John", David Greenglass and

Morton Sobell, the defendants herein, did, the United States of America then and there being at war, conspire, combine, conferedate and agree with each other and with Harry Gold and Ruth Greenglass, named as co conspirators but not as defendants, and with divers other persons presently to the [fol. 29] Grand Jury unknown, to violate subsection (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States of America.

Overt Acts

1. In pursuance of said conspiracy and to effect the objects thereof, in the District of Columbia, on or about June 6, 1944, the defendant Julius Rosenberg visited a building at 247 Delaware Avenue, Washington, D. C.

2. And further in pursuance of said conspiracy and to affect the objects thereof, in the Southern District of New York, on or about November 15, 1944, the defendants Julius Rosenberg and Ethel Rosenberg conferred with Ruth Greenglass.

3. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, the defendants Julius [fol. 30] Rosenberg gave Ruth Greenglass a sum of money.

4. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, Ruth Greenglass boarded a train for New Mexico.

5. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius Rosenberg went to 266 Stanton Street, New York City.

6. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius

Rosenberg received from Ruth Greenglass a paper containing written information.

7. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendants Julius Rosenberg and Ethel Rosenberg conferred with the defendant David Greenglass and Ruth Greenglass.

8. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendant Julius Rosenberg gave Ruth Greenglass a portion of the side of a torn cardboard "Jello" box.

[fol. 31] 9. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 10, 1945, the defendant Julius Rosenberg introduced the defendant David Greenglass to a man on First Avenue, New York City.

10. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg conferred with the defendant David Greenglass.

11. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg received from the defendant David Greenglass a paper containing sketches of experiments conducted at the Los Alamos Project.

12. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 14, 1945, the defendant David Greenglass boarded a train for New Mexico.

(Section 34, Title 50, United States Code.)

The Court: Now ladies and gentlemen of the panel these defendants are charged with violating the statute which reads in part as follows. I will eliminate surplusage:

[fol. 32] If two or more persons conspire to violate the provisions of Section 32 or 33 of this title and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished et cetera, et cetera.

Now it is alleged that the defendants in the indictment conspired to violate Section 32 which was referred to in the foregoing statute which I have just read.

Section 32 provides in part as follows:

Whoever with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation communicates, delivers or transmits or attempts to or aids or induces another to communicate, deliver or transmit to any foreign government or to any faction or party or military or Naval force within a foreign country whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject or citizen thereof either directly or indirectly any document, writing, code book, signal book, sketch, photograph, photograph negative, blueprint, plan, map, model, note, instrument, appliance or information relating to the National Defense shall be punished, et cetera, et cetera.

Now, as I have said before, the indictment is merely a [fol. 33] charge filed by the Grand Jury. It is not to be considered by you as evidence of any wrongdoing on the part of the defendants.

Now I ask you, do you know any of the persons who were members of the Federal Grand Jury or have you had any conversation with anybody who told you he was a member of the Grand Jury that returned this indictment or ever sat in this or any other district?

(The prospective jurors answered in the negative.)

The Court: Now, would the fact that the grand jury filed an indictment against these defendants prevent you from giving these defendants a fair and impartial trial on all of the evidence to be presented or would you feel that merely because they had been thus indicted you would be unable to afford the defendants a fair trial?

(The prospective jurors answer in the negative.)

The Court: Do you have any hesitancy in accepting the proposition that each of the defendants is presumed to be innocent? And that a defendant can only be found guilty when you are convinced beyond a reasonable doubt of the defendants' guilt?

Prospective Juror No. 12: Your Honor, I never served in a criminal court before, but under the present circumstances, [fol. 34] and even though I had not read the indictment, I don't feel that I could give the defendants a fair and equitable opinion.

The Court: Very well. You are excused.

(Monroe W. Fleck excused.)

Prospective Juror No. 6: During the time covered by the indictment I was in the Navy in the Pacific.

The Court: I will get to that in the future. You just hold what you are going to tell me until then.

(William Baring-Gould called as a prospective juror.)

The Court: Your name is?

Prospective Juror: William Baring-Gould.

By the Court:

Q. Did you hear everything that has transpired so far?

A. I did.

—. Is there anything you care to volunteer to the Court?

A. I believe you asked the one question about whether any of the jurors had ever been questioned by an FBI man.

Q. Yes.

A. I was on several occasions during the war questioned about people I had known who were under consideration for various Government positions.

Q. Aside from that have you ever had any other contact with the FBI?

A. No.

[fol. 35] Q. Having had that particular relationship that you refer to with the FBI, would that in any way prevent you from rendering a fair verdict based on the evidence?

A. No, it would not.

Mr. E. H. Bloch: Your Honor, I am very sorry, we didn't get the name of the juror.

The Court: William Baring-Gould. Is that a hyphenated name?

Mr. Gould: It is.

The Court: Now gentlemen, has anyone of you ever had any contact or association in any manner with relation to

yourself or any members of your family, or close friends with a case of this type?

(Prospective jurors indicate in the negative.)

The Court: Would any of you be so prejediced that you could not leave your mind open to decide this case on all the evidence by the fact that the defendants are alleged to have been engaged in a conspiracy to violate the espionage laws of the United States?

Well, prior to that I just want to say this in order to clarify your position as jurors: When you are asked to serve on a jury you are asked to leave all your prejudices behind. No matter how distasteful your service may be, no matter how distasteful your verdict might be, if it is based upon the [fol. 36] evidence, that is what is expected of you. It is just like adding a column of figures. You add a column of figures and you get a result. You may not like the result you have gotten but that is the result. And that is the same situation here. So you can see that we are searching to see whether or not we can get jurors who can receive this evidence with an open mind, without any prejudice or bias for or against either the defense or the Government.

Now I repeat, would any of you be so prejudiced that you could not leave your mind open to decide this case on all the evidence by the fact that the defendants are alleged to have engaged in a conspiracy to violate the espionage laws of the United States, or that it is asserted that the spying was done on behalf of the Soviet Union? Or that the alleged espionage might be related to the Los Alamos Project, New Mexico, and involved atomic energy data or that it may be asserted that the security of the United States is involved here.

Prospective Juror No. 6: I believe my previous reference to my service in the Pacific, your Honor——

The Court: Would cause you to be so prejudiced?

Prospective Juror No. 6: It would.

The Court: All right. Very well, you are excused.

[fol. 37] (George N. Melinette excused.)

(Matthew Farrell called as a prospective juror.)

By the Court:

Q. I take it, Mr. Farrell, you have heard everything that has transpired this morning?

—. Yes.

Q. Is there anything you care to volunteer?

A. No.

The Court: Has any juror any prejudice against the enforcement of a law which makes it a crime to commit espionage or to conspire to commit espionage or against punishment of any person who conspires to commit espionage?

(Prospective jurors indicate in the negative.)

The Court: Do you have any bias, prejudice or scruple against the enforcement of a law the violation of which is punishable by death or against being a juror in a capital case?

Prospective Juror No. 1.: Your Honor, I am prejudiced somewhat against capital punishment and I have so stated in the Supreme Court of the State of New York.

The Court: Very well. We will excuse you.

(Prospective juror No. 1 excused.)

The Court: I want to tell the jurors that the matter of punishment, so that they understand it, is completely within the province of the Court; that no time are they to consider the question of possible punishment. That is completely [fol. 38] within my jurisdiction, not within the jurisdiction of the jurors, and I wouldn't want them to be biased or prejudiced one way or the other by the fact that an individual juror may consider what possible punishment might result. That is within my province, not within the province of the jurors, and what I might or might not do will rest with my conscience if that time arrives.

(Prospective Juror No. 1, Richard H. King excused.)

(J. Cornelius Troy called as a prospective juror.)

By the Court:

Q. Have you heard everything that has transpired this morning?

A. I have.

Q. Is there anything you care to volunteer?
A. No, sir.
The Court: Very well.
Does any juror have any prejudice against the atomic bomb or information relating thereto, or object to the method employed by the government of handling information concerning the atom bomb?

(Prospective jurors indicate in the negative.)

The Court: Does any juror oppose the use of atomic weapons in time of war or oppose the Government's con-
[fol. 39] tinued research and development of atomic weapons, and the supervision of atomic energy and information relating thereto?

(Prospective jurors indicate in the negative.)

The Court: Does any juror feel that developments and information concerning atomic energy should be revealed to Russia or any Russian satellite country?

(Prospective jurors indicate in the negative.)

The Court: Does any juror favor the platform urged by Russia t- the United Nations regarding the use and development and supervision of atomic energy?

(Prospective jurors indicate in the negative.)

The Court: Are any of you, or any members of your family, or have any of you or any members of your family been in the Armed Forces of the United States?

(Many prospective jurors raise their hands.)

The Court: Mr. Troy?
Mr. Troy: Yes, I have. You said were——
The Court: Were you in the Armed Forces, either you or any member of your family?
Mr. Troy: Yes. I did have four brothers in the Army.
The Court: Who served?
Mr. Troy: Yes.
The Court: Would their service in any way prejudice you
[fol. 40] one way of the other from serving in this kind of case?

Mr. Troy: No, sir.

The Court: The next gentleman whose hand was up was Mr. Cuff.

Mr. Cuff: Well, I have four brothers in the last war.

The Court: I address the same question to you. What is your reply?

Mr. Cuff: No, it wouldn't influence me.

The Court: You feel as though you could render a fair verdict in this case based on the evidence?

Mr. Cuff: Yes, sir.

The Court: Yes?

Prospective Juror No. 5: I served in the Navy during the First World War.

The Court: Would that service in any way prejudice you or prevent you from keeping your mind open?

Prospective Juror No. 5: No, sir, it would not.

The Court: No. 6, Mr. Piper.

Mr. Piper: My brother was in the service in the last war.

The Court: Could you despite that fact keep your mind open and serve in this case without prejudice to either side? [fol. 41] Mr. Piper: Yes.

The Court: Mr. Fritz?

Mr. Fritz: My brother also served in the Navy in the last war.

The Court: Would that fact in any way prejudice you in serving in this case?

Mr. Fritz: No, sir.

The Court: Anybody else?

Mr. Boyle?

Mr. Boyle: The United States Navy in the First World War.

The Court: Could you serve here without any prejudice?

Mr. Boyle: I can, your Honor.

The Court: Mr. Farrell?

Mr. Farrell: I had two brothers in the last war.

The Court: Do you feel you could serve with propriety in this case, keep your mind open until all the evidence is in?

Mr. Farrell: Yes.

The Court: Mr. Miclo?

Mr. Miclo: I had two brothers and three nephews in the past war.

The Court: Do you feel you could serve?
Mr. Miclo: Yes.
[fol. 42] The Court: With propriety in this case?
Mr. Miclo: Yes.
The Court: Keep your mind open until all the evidence is in?
Mr. Miclo: Yes.
The Court: And the Court has charged the jury?
Mr. Miclo: Yes.
The Court: You do feel that way?
Mr. Miclo: Yes.
The Court: Mr. Miclo, you do feel that way?
Mr. Miclo: Yes, certainly.
The Court: Anybody else?

(Prospective jurors indicate in the negative.)

The Court: Would the fact that the United States may be involved in a war prevent or hinder you from rendering a fair and unbiased opinion in this case based solely on the evidence and the instructions of the Court?

(Prospective jurors indicate in the negative.)

The Court: Has any juror or member of the jurors' family attended the College of the City of New York known as C.C.N.Y.? If so, would the fact that some of the defendants also may have graduated from that institution prejudice you one way or the other in your consideration of the evidence in this case?

Mr. E. H. Bloch: If your Honor please, I don't like to [fol. 43] interrupt in the midst of your questioning. I wonder if I could come to the bench with Mr. Saypol for just a moment.

The Court: Step up.

(The following discussion took place at the bench.)

Mr. E. H. Bloch: I really don't know what the practice is here with respect to objecting to certain questions which I may consider to be irrelevant and improper as the case may be. Of course, once the Court asks a question it is asked, and I suppose if there is any damage done it has been done, and in our estimation it is an improper question. What would you suggest?

The Court: I would suggest you hold them until the questioning is completely finished. I might tell you that the matter of questioning the jury is completely within the discretion of the Court.

Mr. E. H. Bloch: I understand.

The Court: I think whatever objection you have will be of no moment whatsoever in the event of an appeal subsequently, but I will permit you to object when the entire questioning is through.

Mr. Kuntz: Here is specifically what we have in mind, your Honor. You might consider it and we can avoid any objection: In the question that Mr. Saypol proposed about [fol. 44] that long list of organizations, we don't have objection to asking whether they are or were members of those organizations, but if you will notice in the question *it*self there is a characterization first of all, subversive, or front, or something like that, and secondly, on the Attorney General's list. It seems to us that nothing could be accomplished except possibly prejudice by the characterization.

The Court: How would you rather have me characterize it?

Mr. Kuntz: Just asking them whether they were ever members of those organizations. That should satisfy Mr. Saypol. That should enable him to determine their fitness as jurors, rather than the characterization.

Mr. E. H. Bloch: Incidentally, as far as the question that Mr. Kuntz just discussed, I wasn't thinking of any questions that the Court has already asked, but trying to anticipate.

Mr. Saypol: I take it that the Court has evaluated these questions. The same type of questions were used and approved on both the Hiss case and Dennis case.

The Court: I don't see that it is terribly important either way, but if they have a serious objection to it, I would just as leave, leave out the word subversive.

Mr. Saypol: No. I should think that they would stand [fol. 45] just as their characterizations of some of the organizations which were referred to by them in their questions. It is so highly discretionary or entirely discretionary, and I can't see how they will be prejudiced.

Mr. Kuntz: First of all, Judge Kaufman, as you probably know, in regard to many of these organizations, probably all

of them, no hearings were ever held on the question whether they were subversive.

The Court: Well, let us not get into that.

Mr. Kuntz: No, but to tell the jury that.

The Court: Well, therefore I think it would be proper, wouldn't it, to say the Attorney General's list? What objection have you really got to it?

Mr. Kuntz: Because they will give more weight to the Attorney General's list when it is known that the Attorney General held no hearings. I have no objection to the list of the organizations.

The Court: I will decide that as I come to it.

(The following took place in open court.)

The Court: All right, gentlemen.

Has any one of you read anything in any newspaper or other publication or heard anything on radio or television about this case?

(Many jurors indicate in the affirmative.)

[fol. 46] The Court: I think that is a fair assumption.

Have you read or heard anything concerning the arrest and conviction of one Harry Gold and one David Greenglass for espionage? I take it you have all read about that, too. And you also have read about Mrs. Ruth Greenglass? Now, I want you to listen to this question: Have you formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all of the evidence and the instructions of the Court are complete?

(Prospective jurors indicate in the negative.)

The Court: I might state in connection with that that ultimately the jury that is selected to try this case will be asked not to read any newspapers accounts of the case, not to listen to any radio accounts or television accounts of the case, because we want you to get the evidence in the courtroom. The Court sits as a pilot here attempting to screen the evidence, so that evidence which is objectionable on legal grounds does not come to the jury, but the press

has a right to report the objections that were stated perhaps outside of your presence frequently and other matters that did not come to you and whatever good we might try [fol. 47] to accomplish by excluding evidence that was objectionable would be completely lost if you were to read a newspaper account of the case.

Mr. Troy: Your Honor, I am afraid on that question about Harry Gold, I would be a little prejudiced there. In fact, the way I feel about it, after reading it.

The Court: Very well, you are excused.

(Cornelius Troy excused.)

(Timothy Ryan called as prospective Juror No. 1.)

By the Court:

Q. Mr. Ryan, have you heard everything that transpired this morning?

A. I have.

Q. Is there anything you care to volunteer?

A. No.

Q. You think you can serve with propriety in this case?

A. I do.

The Court: Now, I am going to read a question to you and I am certain that all of you have an answer to it. So hold it until I am finished. It has been submitted by respective counsel: Have you at any time been a subscriber to or reader of or connected in any way with the following publications:

The Brooklyn Tablet, the Journal-American, The New York Enquirer, the New York Sun, the World-Telegram, [fol. 48] the American Legion Monthly, the Daily Mirror, the Daily News, Counterattack, Plain Talk, Red Channels, the Daily Worker, The Worker, the Communist Political Affairs, Morning Freiheit, New Masses, In Fact, Peoples World, the German-American, Soviet Russia today, Masses & Main Stream, Peoples Voice, The Protestant, Contact, The National Guardian, New Foundations, New Times, World Tourist, Inc., Amtorg Trading Corporation, Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., Cafe

Society Uptown, Cafe Society Downtown, International Publishers, New Century Publishers, Workers Book Shop, Washington Cooperative Book Shop, Jefferson Book Shop, Four Continent Book Corporation, Abraham Lincoln Brigade, Abraham Lincoln School, Chicago, Illinois; Action Committee to Free Spain now, American League against War and Fascism, American Association for Reconstruction in Jugoslavia, Inc., American Committee for European Workers Relief, American Committee for Protection of Foreign Born, American Committee for Jugoslav Relief, Inc., American Council for a Democratic Greece, American Council on Soviet Relations, American Croation Congress, American Jewish Labor Council, American League for Peace and Democracy, American Peace Mobilization, Ameri- [fol. 49] can Polish Labor Council, American Russian Institute of San Francisco, American Slav Congress, American Student Union, American Youth Congress, American Youth For Democracy, Armenian Progressive League of America, Boston School for Marxists Studies, California Labor School, Inc., 216 Market Street, San Francisco, California; Central Council of American Women of Croation Descent also known as Central Council of American Croation Women, National Council of Croation Women, Citizens Committee of the Upper West Side, New York City; Citizens Protective League, Citizens Committee to free Earl Browder, Citizens Committee for Harry Bridges, Comite Coordinator Pro Republica Espanola, Committee for a Democratic Far Eastern Policy, Commonwealth College, Mena, Arkansas; Civil Rights Congress and its State Affiliates, Committee to aid the Fighting South, Communist Party, U. S. A.; Communist Political Association, Connecticut State Youth Conference, Congress of American Revolutionary Writers, Congress of American Women, Council on African Affairs, Council for Pan American Democracy, Daily Worker Press Club, Dennis Defense Committee, Friends of the Soviet Union, George Washington Carver School, New York City; German-American Bund, Hollywood Writers Mobilization for Defense, Hungarian-American Council for Democracy, Independent Socialist League, [fol. 50] International Labor Defense, *International Labor Defense*, International Workers Order and Affiliated Groups

Jefferson School of Social Science, New York City; Jewish Peoples Committee, Joint Anti-Fascist Refugee Committee, Ku Klux Klan, Labor Research Association, Inc., Labor Youth League, League of American Writers, Macedonian-American Peoples League, Michigan Civil Rights Federation, National Committee for the Defense of Political Prisoners, National Committee to Win the Peace, National Council of Americans of Croation Descent, National Council of American Soviet Friendship, National Federation for Constitutional Liberties, National Negro Congress, Nature Friends of American since 1935, Negro Labor Victory Committee, New Committee for Publications, Ohio School of Social Sciences, Peoples Educational Association, Peoples Institute of Applied Religion, Peoples Radio Foundation, Inc., Philadelphia School of Social Science and Art, Photo League, New York City; Proletarian Party of America, Revolutionary Workers League, Samuel Adams School, Boston, Massachusetts; School of Jewish Studies, New York City; Seattle Labor School, Seattle, Washington; Serbian Vidovdan Council, Silvershirt Legion of America, Slovenian-American National Council, Socialist Workers Party including American Committee for European Workers Relief, [fol. 51] Socialist Youth League, Southern Negro Youth Congress, Tom Paine School of Social Science, Philadelphia, Pennsylvania; Tom Paine School of Westchester, New York; United Committee for Democratic Rights, United Committee for South Slavic Americans, United Harlem Tenants and Consumers Organization, United May Day Committee, United Negro and Allied Veterans of America, Veterans against Discrimination of Civil Rights Congress of New York, Veterans of the Abraham Lincoln Brigade, Walt Whitman's School of Social Science, Newark, New Jersey; Washington Book Shop Association, Washington Committee for Democratic Action, Wisconsin Conference on Social Legislation, Workers Alliance, Workers Party, including Socialist Youth League, Young Communist League, Institute of Pacific Relations, American-Russian Institute for Cultural Relations with the Soviet Union, Inc., National Emergency Conference for Democratic Rights, China Aid Council, International Juridicial Association.

I take it all of you have read one or more of those papers.

Prospective Juror No. 1: Did I understand your question correctly, your Honor, that it was connected with them?

The Court: Either connected with them or read them.

[fol. 52] Prospective Juror No. 1: Well, I do a great deal of business with practically—well, with the Daily News particularly and the New York Sun. As a matter of fact, I am in the printing business and furnish them ink.

The Court: I will ask you this: In connection with your relations in your business or as a result of having read anything in any of these papers would you be so prejudiced that you could not render a verdict in this case based on the evidence and the evidence alone?

Prospective Juror No. 1: No, sir.

The Court: Would it be embarrassing to you in any way to serve in this case?

Prospective Juror No. 1: It would not.

The Court: Because of your business association?

Prospective Juror No. 1: No.

The Court: Now, to all of you gentlemen and each and every one of you who raised your hands as having read one or more or these papers from time to time, as a result of what you have read, have you become so prejudiced that you could not serve with propriety in this case, keep your minds open until all the evidence is in?

Prospective Juror No. 12: Your Honor?

The Court: Yes.

[fol. 53] Prospective Juror No. 12: I should mention that I was employed once by the Hearst newspapers of which the Journal American is one.

The Court: How long ago?

Prospective Juror No. 12: 1935.

The Court: In what capacity?

Prospective Juror No. 12: I was a member of the general advertising department.

The Court: You are now with Time Magazine?

Prospective Juror No. 12: That is correct.

The Court: As a result of your past association or your present association do you feel you could not keep your mind open until all the evidence is in?

Prospective Juror No. 12: I feel I could.

The Court: You feel you could?

Prospective Juror No. 12: I do.

The Court: I want you to listen to these other papers and I will address a question based on them.

Daily Worker, The Worker, The Communist, Political Affairs, Morning Freheit, New Masses, In Fact, Peoples World, The German-American, Soviet Russia today, Masses & Main Stream, Peoples Voice, The Protestant, Contact, The National Guardian, New Foundations, New Times.

Has any of you read or been associated with any of those [fol. 54] publications?

Mr. Layman: I have read a couple of them. In Fact, and one other I believe.

The Court: Mr. Layman. You are a journalist, are you?

Mr. Layman: Yes.

The Court: You are with what company?

Mr. Layman: Scholastic Magazine.

The Court: What type of magazine is that?

Mr. Layman: We publish magazines for the junior and senior high schools.

The Court: You say you have read New Masses?

Mr. Layman: No. I have read In Fact.

The Court: As a result of having read that magazine have you come to the jury box with any particular prejudice for or against either side?

Mr. Layman: Not for or against either side, no.

The Court: Do you feel that you could leave your mind open and decide this case based on the evidence and the evidence alone?

Mr. Layman: Yes.

The Court: Are you a regular subscriber to any one of these?

Mr. Layman: No. I have only read them occasionally.

[fol. 55] The Court: In connection with your work generally?

Mr. Layman: No. Just in connection with curiosity.

The Court: Has any juror or any member of his family or close personal friend had any dealing with or been employed by any of the following:

World Tourist, Inc., Amtorg Trading Corporation, Amtorg Tass News Agency, Earl Browder, Inc., Soviet Embassy, any of the former Soviet Consuls, the former Soviet

Purchasing Commission, Freedom of the Press, Inc., Cafe Society Uptown, Cafe Society Downtown, International Publishers, New Century Publishers, Workers Book Shop?

The question is has any juror or any member of his family or close personal friend had any dealing with or been employed by the list I have just read to you?

(Prospective jurors indicate in the negative.)

The Court: Has any juror been employed by or any member of his family or close relative, the Washington Cooperative Book Shop, the Jefferson Book Shop, Four Continent Book Corporation?

(Prospective jurors indicate in the negative.)

The Court: Has any member of the jury ever been a member of, made contributions to or been associated in any [fol. 56] way with any of the following organizations which are contained on a list published by the Attorney General pursuant to a Presidential Executive order.

Mr. Schaefer would you please read the page 33?

(The Clerk read as follows):

Abraham Lincoln Brigade, Abraham Lincoln School, Chicago, Illinois; Action Committee to Free Spain now, American League against War and Fascism, American Association for Reconstruction in Jugoslavia, Inc., American Committee for Protection of Foreign Born, American Committee for Jugoslav Relief, Inc., American Council for a Democratic Greece, American Council on Soviet Relations, American Croation Congress, American Jewish Labor Council, American League for Peace and Democracy, American Peace Mobilization, American Polish Labor Council, American Russian Institute of San Francisco, American Slav Congress, American Student Union, American Youth Congress, American Youth For Democracy, Armenian Progressive League of America, Boston School for Marxist Studies, California Labor School, Inc., 216 Market Street, San Francisco, California; Central Council of American Women of Croation Descent also known as Central Council of Ameri- [fol. 57] can Croation Women, National Council of Croation Women, Citizens Committee of the Upper West Side, New York City; Citizens Protective League, Citizens Committee

to free Earl Browder, Citizens Committee for Harry Bridges, Comite Coordinator Pro Republica Espanola, Committee for a Democratic Far Eastern Policy, Commonwealth College Mena, Arkansas; Civil Rights Congress and its State Affiliates, Committee to aid the Fighting South, Communist Party, U.S.A.; Communist Political Association, Connecticut State Youth Conference, Congress of American Revolutionary Writers, Congress of American Women, Council on African Affairs, Council for Pan American Democracy, Daily Worker Press Club, Dennis Defense Committee, Friends of the Soviet Union, George Washington Carver School, New York City; German-American Bund, Hollywood Writers Mobilization for Defense, Hungarian-American Council for Democracy, Independent Socialist League, International Labor Defense, *International Labor Defense*, International Workers Order and Affiliated Groups, Jefferson School of Social Science, New York City; Jewish Peoples Committee, Joint Anti-Fascist Refugee Committee, Ku Klux Klan, Labor Research Association, Inc., Labor Youth League, League of American Writers, Macedonian-American Peoples League, Michigan Civil [fol. 58] Rights Federation, National Committee for the Defense of Political Prisoners, National Committee to Win the Peace, National Council of Americans of Croation Descent, National Council of American Soviet Friendship, National Federation for Constitutional Liberties, National Negro Congress, Nature Friends of America, since 1935; Negro Labor Victory Committee, New Committee for Publications, Ohio School of Social Sciences, Peoples Educational Association, Peoples Institute of Applied Religion, Peoples Radio Foundation, Inc., Philadelphia School of Social Science and Art, Photo League, New York City; Proletarian Party of America, Revolutionary Workers League, Samuel Adams School, Boston, Massachusetts; School of Jewish Studies, New York City; Seattle Labor School, Seattle, Washington; Serbian Vidovdan Council, Silvershirt Legion of America, Slovenian-American National Council, Socialist Workers Party including American Committee for European Workers Relief, Socialist Youth League, Southern Negro Youth Congress, Tom Paine School of Social Science, Philadelphia, Pennsylvania; Tom Paine School of Westchester, New York; United Committee for Democratic

Rights, United Committee for South Slavic Americans, United Harlem Tenants and Consumers Organization, United May Day Committee, United Negro and Allied Veterans of America, Veterans against Discrimination of Civil [fol. 59] Rights Congress of New York, Veterans of the Abraham Lincoln Brigade, Walt Whitman's School of Social Science, Newark, New Jersey; Washington Book Shop Association, Washington Committee for Democratic Action, Wisconsin Conference on Social Legislation, Workers Alliance, Workers Party, including Socialist Youth League, Young Communist League, Institute of Pacific Relations, American-Russian Institute for Cultural Relations with the Soviet Union, Inc., National Emergency Conference for Democratic Rights, China Aid Council, International Juridical Association.

The Court: Well now, the question is whether any juror has been a member of, contributed to, or been associated with, or any member of his family or close friend, with any of those organizations that have just been read to you.

(Prospective jurors indicate in the negative.)

The Court: Now, have any of you, and I am sure you all have, read newspaper articles or writings or heard speeches or lectures by Westbrook Pegler, Walter Winchell, John O'Donnell, Frederick Woltman, Melton Frank, Howard Rushmore, Louis F. Budenz, Fulton Lewis, Jr., Elizabeth Bentley? I take it you all have read their works.

Is there anybody on the jury who has not read any of [fol. 60] those?

(Prospective jurors indicate in the negative.)

The Court: Or has not heard at least one or more of those read to you?

(Prospective jurors indicate in the negative.)

The Court: Now, as the result of anything you have read in the columns of these newspaper men or women, or as the result of anything you have heard on the radio or otherwise from any of these have you become so prejudiced that you could not render a verdict in this case based upon the evidence and the evidence alone?

(Prospective jurors indicate in the negative.)

The Court: Well, we will recess at this point until 2:30. And ladies and gentlemen, both in the box and those who probably will be subsequently asked to take a place in the jury box, I ask you please not to discuss this case between yourselves, not to permit anybody to discuss it with you; do not give the matter any thought at all during lunchtime except in so -ar as anything which you will have to volunteer in the event that you are called, and I ask you to please return to your respective places at 2:30. As far as the gentlemen who are in the jury box, you may also return right to your respective places at 2:30 this afternoon.

(Recess to 2:30 P.M.)

[fol. 61] Afternoon Session—2:30 P.M.

The Court: Now, at the close of the session, Mr. Layman communicated with me and I shall excuse No. 3, Mr. Layman.

(Prospective juror No. 3, Mr. Layman, excused.)

Mr. E. H. Bloch: May I direct an inquiry to the Court? Is that a peremptory challenge on the part of the Government?

The Court: No, it is my challenge.

Mr. E. H. Bloch: All right, thank you.

The Clerk: Donald S. Layman is excused.

Samuel G. French, No. 3.

(Mr. French takes his seat in the jurybox.)

By the Court: (To, Mr. French)

Q. Mr. French, did you hear everything that transpired in court this morning?

A. Yes, your Honor.

Q. Is there anything that you care to volunteer?

A. Yes.

Q. What is it?

A. I was employed by the Federal Government in Washington for five years during the last war.

Q. In what branch?

A. In various war agencies. One of my closest friends

and neighbors was with the FBI, working on a sedition case directly under O. John Rogge.

Q. Now, by reason of that friendship, has anything hap-
[fol. 62] pened which would prevent you from keeping an open mind in this kind of a case and rendering a verdict based upon the evidence and the evidence alone?

A. I think not, your Honor.

Q. Now, you say, "I think not." I must be sure you will decide this case based on the evidence.

A. Well, I believe there is a possibility of prejudice on any testimony the witness might present, Mr. Rogge.

The Court: Very well, you may be excused.

The Clerk: Samuel G. French excused.

Mrs. Edna S. Pincous.

(Mrs. Pincous takes seat No. 3 in the jurybox.)

By the Court: (To Mrs. Pincous)

Q. Mrs. Pincous, did you hear everything that transpired in court?

A. Yes.

Q. Is there anything you care to volunteer to the Court?

A. Except that my nephew went to City College.

Q. When did he get out of City College?

A. About four years ago.

Q. By reason of the fact that your nephew went to City College, is there any reason why you feel you couldn't render a verdict based on the evidence and the evidence alone, if it appears at the trial that some of the defendants also went to City College?

A. Oh, no; it wouldn't have any bearing on it at all.

[fol. 63] The Court: Now, Mr. Friedlander, you wanted to communicate something to me?

Mr. Friedlander: (11) Yes. I couldn't quite understand one of your questions, and I would like to state that the company I am connected with was an agent for the Rubber Reserve Company during the war.

By the Court: (To Mr. Friedlander)

Q. By reason of such association on your part and this work which the company did, do you feel that you could

nevertheless sit in this case with propriety and render a verdict based upon the evidence and the evidence alone?

A. Yes, sir.

Q. What was the name of that company?

A. Nat E. Berzen.

Q. What is their work?

A. Dealers in scrap rubber and crude rubber.

The Court: Very well, you may be seated.

Now, I shall continue, ladies and gentlemen. I would like to have your attention, please.

Has any juror or any relative or close friends of any jurors ever been the subject of any investigation or accusation by any Committee of Congress, by any grand jury, federal or state?

(Prospective jurors indicated in the negative.)

[fol. 64] The Court: Do you know any Congressman, who is now or has been a member of the House of Representatives Committee on Un-American activities, or any present or former employees of that committee, or investigators for that committee?

(The prospective jurors indicated in the negative.)

The Court: Have you or any one you know ever testified before or given information to the House Committee on Un-American Activities?

(Prospective jurors indicated in the negative.)

The Court: Have you ever read any reports or transcripts of the hearings of the House Committee on Un-American Activities, or read any part of the publication of the Committee entitled "Report of Soviet Espionage Activities in Connection With the Atom Bomb"?

(Prospective jurors indicated in the negative.)

The Court: Has any juror such prejudice or bias against the House Committee on Un-American Activities, the Joint House-Senate Atomic Energy Committee, or Atomic Energy Commission that it would so influence your judgment, that you would be unable to arrive at a just and honest verdict?

(Prospective jurors indicated in the negative.)

The Court: Have you ever formed or expressed any [fol. 65] opinion concerning the work of the House Committee on Un-American Acitvities?

(Prospective jurors indicated in the negative.)

The Court: Have you ever been subject or do you expect to be subject to what is commonly known as the "loyalty oath"?

(Juror No. 9 raised his hand.)

By the Court: (To juror 9)

Q. Yes?
A. I am assigned to the Office of Civilian Defense.
Q. You are Mr. Boyle?
A. Boyle, No. 9.
Q. You have signed for Civilian Defense, City of New York?
A. That is right.

The Court: Has anybody got any prejudice or bias against the Government's loyalty program?

(Prospective jurors indicated in the negative.)

The Court: Has any juror or member of his family or close personal friend ever attended an educational institution which was supported, either directly or indirectly, by either the Russian Government, the Communist Party or any affiliated Communist Party association or Communist Front Organization?

(Prospective jurors indicated in the negative.)

The Court: Does any juror believe in or belong to any organization which is dedicated to or teaches or advocates [fol. 66] the overthrow of the Government of the United States by force and violence?

(Prospective jurors indicated in the negative.)

The Court: Has any member of the jury at any time indicated support of the Communist Party or signed a Communist Party petition, or signed an election petition nominating Benjamin J. Davis to public office?

(Prospective jurors indicated in the negative.)

The Court: Was any juror born in or has any juror resided or visited in Russia or any of the Russian satellite countries, or has any member of his or her family done so?

Mrs. Pincous: (Juror No. 3) I believe my father-in-law was born in some part of Russia. I don't know where.

By the Court: (To Mrs. Pincous)

Q. What is his name?
A. He is dead.
Q. What was his name?
A. Henry Pincous.
Q. Have you ever had any discussions with your father-in-law prior to his death concerning Russia?
A. No.
Q. Or any of the matter which is before the Court today, which in any way would prejudice you either for or against any of the parties to this action?
A. No, he was here for many years.
[fol. 67] Q. Was he a naturalized citizen?
A. Yes.

The Court: Has any juror or member of your family ever worked for the Russian Government, either in Russia or elsewhere, or has any juror ever worked for any Russian relief agency?

(Prospective Jurors indicated in the negative.)

The Court: Have you at any time been a member of, made contribution to or been associated in any way with any business or religious organizations or labor organizations, or organizations of any character, which were supported either directly or indirectly by the Communist Party, or whose officers or representatives have made any expressions of advocacy of or friendliness towards the Communists or Communism in general, on the one hand; or of opposition or hostility to Communists and Communism, on the other hand, which expressions you have read or heard in any manner?

(Prospective jurors indicated in the negative.)

The Court: Now, the question is whether anybody has belonged to any business or religious organization or any organizations of any kind which advocates or wherein expressions have been made, either friendly to Communists or Communism, or opposed to Communists or Communism?

Mr. Jordan: (Juror No. 4) The American Legion.

By the Court: (To juror 4)

Q. Now, would the fact, Mr. Jordan, that the American [fol. 68] Legion has made some expressions on the subject influence you, or have you been so influenced, that in a case of this character you couldn't come in here with an open mind and decide it upon the evidence and the evidence alone?

A. No, your Honor. It has been many years. I belonged to it for 20 years, but in the last 13 years I haven't belonged.

Q. And you feel you can conscientiously perform your duty as a citizen and decide this case based on the evidence and the evidence alone?

A. I do, your Honor.

The Court: Is that the general feeling of each and every member of the jury? If it is not, will you please speak up?

(Prospective jurors nodded in the affirmative.)

The Court: Have you at any time been a member of, made contributions to or been associated in any way with business or religious organizations, or organizations of any character, in connection with the activities of which you have formed any opinions or impressions as to the merits of this charge, unfavorable either to the Government or to any of the defendants, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are completed?

(Prospective jurors indicated in the negative.)

The Court: At the defendants' request, I ask you if upon [fol. 69] a consideration of all the evidence and the instructions of the Court you believe that the Government has not

proved its charges beyond a reasonable doubt, would the fact that the defendants asserted their constitutional privilege against testifying as to matters which may tend to incriminate them influence you to bring in a verdict against them?

(Prospective jurors indicated in the negative.)

The Court: Would the fact that Harry Gold, David Greenglass or any other witness for the Government, who have confessed to espionage for the Soviet Union, so prejudice you that you would be unable to accept as truthful anything these witnesses might testify to?

(Prospective jurors indicated in the negative.)

The Court: On the other hand, would you give the testimony of such a witness greater weight than that of an ordinary witness?

(Prospective jurors indicated in the negative.)

The Court: In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, submit the testimony of such witnesses to the same scrutiny, attested by the same standards, whether the witness was called by the defense or by the prosecution?

(Prospective jurors nodded in the affirmative.)

[fol. 70] The Court: For the record, there are some questions that I notice would require an affirmative answer. Where there is no answer at all in connection with such questions, let the record show that the jurors did not volunteer anything adverse.

Now, I am continuing the same question: Whether the witness is or was with the Department of Justice or Federal Bureau of Investigation, generally known as the FBI, or whether the witness was or is a member of the Communist Party, the question is whether you were to form the same weight to that type of witness as you would another type of witness?

Prospective Juror No. 8: I am afraid I wouldn't be able to do that.

The Court: Very well, you may be excused.

The Cler-: William H. Fritz excused.
William Ciner, Juror No. 8.

(Mr. Ciner takes seat No. 8 in the jurybox.)

By the Court:

Q. Mr. Ciner, have you heard everything that transpired in court today?
A. I have, your Honor.
Q. Is there anything you care to volunteer?
A. No, sir.

The Court: Now, I shall re-read that question.
In determining the truth of falsity of the testimony of any [fol. 71] witness, would you, in accordance with the instructions of the Court, that is when the time comes for me to instruct the jury, accept my instructions on the subject of submitting the testimony of such witnesses, to the same scrutiny, attested by the same standards, A, whether the witness was called by the defense or by the prosecution; B, whether the witness is or was an employee of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI, or whether the witness is or was a member of the Communist Party; and, C,—well just up to that point, I will pause right there. Will you accept my instructions on the subject? I want to advise you also that unless you feel in good conscience that you will accept my instructions with respect to anything that I decide I should instruct the jury upon, unless you feel that you will accept my instructions, even though it may not accord with what you feel should be the law on the subject, you feel you cannot accept my instructions, you have no place on the jury and I wish you would speak up right now.

(Prospective jurors nodded in the affirmative.)

The Court: Has any juror formed an opinion with regard to the truthfulness or veracity of any possible witness or party?

(Prospective jurors indicated in the negative.)

[fol. 72] The Court: Do you subscribe to the principle that every one, regardless of race, color, creed or position

in society, and regardless also of his political or religious beliefs, is entitled to a fair trial, according to our laws?

(Prospective jurors nodded in the affirmative.)

The Court: Has any juror any prejudice, bias or sympathy, based solely upon a person's educational background or personal appearance?

(Prospective jurors indicated in the negative.)

The Court: If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence, in accordance with the instructions of the Court, would you be embarrassed in arriving at or rendering a verdict of not guilty because of your employment or by reason of your membership in or affiliation with any church, political party, club, society, or any other organization of any kind whatsoever, or in any other manner?

(Prospective jurors indicated in the negative.)

The Court: Is there anything that has happened in connection with this case which would give you any fear or hesitancy in declaring the defendants not guilty, if the evidence in law warranted such a verdict?

(Prospective jurors indicated in the negative.)

The Court: For example, has anyone claiming to be a [fol. 73] Government official or FBI agent spoken to you or any member of your family or friends?

(Prospective jurors indicated in the negative.)

The Court: Would any of you have any difficulty in giving both the defense counsel and the prosecuting attorney an equally respectful hearing in this case?

(Prospective jurors indicated in the negative.)

The Court: Will you consider the evidence in this case, in so far as it applies to each one of the defendants, individually, in connection with his or her individual guilt or innocence, and render verdicts as to each of them purely on the evidence as it affects each one individually - and I will deal with that at greater length in my charge?

(Prospective jurors nodded in the affirmative.)

The Court: Has any juror such bias or prejudice or predisposition of any kind with respect to the Government or the defendants, or do you know any reason which would prevent you from trying a case of this character fairly and impartially and reaching a verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Judge?

(Prospective jurors indicated in the negative.)

The Court: Now, I shall call on each one of the jurors to [fol. 74] tell me something about their occupation or occupation of the family, and I don't want you to hesitate in speaking up, because, as I have told you before, we are not attempting to pry into your personal business, but everybody concerned in the litigation is entitled to know something about your background.

Now, Mr. Ryan, would you tell us what your occupation is?

Mr. Ryan: I am vice-president of the International Printing Ink Corporation. They are manufacturers of printing ink. I am in charge of their newspaper department, throughout the United States.

By the Court:

Q. Are you married?
A. I am married; yes, your Honor.
Q. Have you any family?
A. I have one son, who is a dentist.
Q. You son is a dentist?
A. That's right.
Q. He has his own office, has he?
A. His own office, here at 264 Lexington Avenue.
Q. Now, Mr. Cuff, what is your occupation?
A. I am a switchman with the New York Telephone Company.
Q. Are you married?
A. Yes, sir.
Q. Have you any children?
[fol. 75] A. I have four children.
Q. I take it they are all too young to work?

A. Much too young.
Q. Your wife does not work?
A. No, she doesn't.
Q. Does your wife work, Mr. Ryan?
A. No.
Q. Mrs. Pincous, are you employed at the present time?
A. No.
Q. You are a housewife?
A. Yes.
Q. What does your husband do?
A. Insurance broker.
Q. What is the name of his firm?
A. It is under his own name, Joseph S. Pincous.
Q. Is he a life insurance agent?
A. General agent.
Q. General agent?
A. Yes.
Q. What companies does he work with?
A. Well, he is a general broker, I should say.
Q. Mr. Jordan?
A. I work in the securities cage of W. E. Burnet Company, 11 Wall Street, in charge of nine men. I have been there six years. I have two children, one in high school, one in public school.
Q. What school do they attend?
A. One goes to DeWitt Clinton High School and the other one goes to, I believe, P.S. 113, Bronx.
[fol. 75a] Q. I take it your wife is not employed?
A. No, sir.

[fol. 76] By the Court:

Q. Mr. Farrell?
A. United Cigar Whelan Store Corporation.
Q. In what capacity?
A. I work in both drug sales and cigar sales.
Q. You live at home with your wife?
A. No. I am single. I live home with my mother.
Q. Mr. Philbrick?
A. My occupation is that of placement manager in a very small employment agency. I have the mail desk.
Q. What is the name of the agency?

A. Castle Hill Personnel Service.
Q. Are you married?
A. 301 Madison. Yes.
Q. Have you any children?
A. No children.
Q. You live at home with your wife?
A. Yes. My wife is a secretary.
Q. Whom does she work for?
A. She is a church secretary.
Q. What church?
A. Christian Science.

By the Court:

Mr. Piper?
A. I am not employed at this moment.
Q. What was your employment?
A. My business was that of exporting and importing, Latin American countries.
Q. What type of products?
[fol. 77] A. General merchandise and produce.
Q. When was the last time you were engaged in that?
A. In the export it was in 1948.
Q. Had that been your occupation all of your life?
A. Yes, mostly, banking is another line.
Q. You live at home with your wife, do you?
A. Yes, sir.
Q. Any children?
A. I have a stepson; he is in the Army now.
Q. Presently in the Army?
A. Yes.

By the Court:

Q. Mr. Ciner?
A. Branch office manager for Western Union Telegraph; married; wife unemployed.
Q. A minor child?
A. One child three and a half years old.
Q. Mr. Boyle?
A. Employed by myself.
Q. You live at home with your wife, do you?
A. No. I am a bachelor.

Q. You are a bachelor?
A. Yes.
Q. You have this apartment, do you?
A. Yes.
Q. At 4346 Martha Avenue, Bronx?
A. Yes.
Q. Mr. Miclo?
A. New York Telephone Company, in the plant department.
Q. How long have you been employed in that department?
[fol. 78] A. Twenty-two years.
Q. Married?
A. Yes.
Q. Any children employed?
A. I have a son 14 years old.
Q. He goes to school?
A. Yes.
Q. Mr. Friedlander?
A. I am vice-president in Nate Berzen Company.
Q. Married?
A. Married, three children.
Q. Will you tell us once again what the business of Berzen is?
A. It deals in scrap rubber and crude rubber.
Q. How long have you been with them?
A. 27 years.
Q. How old did you say the children were?
A. My oldest daughter is 13, I have another daughter 11 and a son five.
Q. All at school?
A. All in school.
Q. Mr. Baring-Gould?
A. I am employed in the circulation department of Time, Incorporated Magazine, publishers; married, two small children.
Q. How long have you been with Time?
A. About fourteen years this month.
Q. And I believe you told us that prior to that time you were with the Hearst Organization?
A. That is correct.
Q. Are you married?

A. Yes, I am.
Q. Is your wife employed?
A. No, she is not.
[fol. 79] Q. Any children who work?
A. Yes, I have children; one seven and one three.

The Court: Did you want to ask something?
Juror No. 3: I have one son. I don't think I mentioned that. He goes to Stuyvesant High School.
The Court: How old is he?
Prospective Juror No. 3: Sixteen.
The Court: Very well.

(The following discussion took place at the bench.)

Mr. E. H. Bloch: I have three types of follow-up questions, one, where it generally applies to the entire panel and the others to specific jurors. I have just a few questions of the general type, in regard to the specific individuals on the jury by virtue of some of the answers and some of the background that has been developed. How would your Honor care to have me go about it?
The Court: Very brief, are they?
Mr. E. H. Bloch: I don't think they are going to be very long.
The Court: If they are very brief, I will permit you to ask them. Address them to me and if I think they are all right, I will allow them.
Mr. E. H. Bloch: I was wondering whether or not I should address myself by asking the Court to ask in the questions propounded, Question No. so-and-so, or would you [fol. 80] rather——
The Court: All right, suppose you state it in that fashion.
Mr. E. H. Bloch: All right.
Mr. Saypol: Without extending the verbiage of the question, without stating the text.
The Court: He will mention it by number.
Mr. E. H. Bloch: I think that would be fair.

(The following took place in open court:)

Mr. E. H. Bloch: If your Honor please, at this time I would like to ask your Honor to direct certain inquiries to the entire panel, and I believe that these questions will apply

generally to all the jurors, and then I am going to ask your Honor after asking these general questions to ask specific questions of specific jurors, by virtue of some of the answers that have been elicited.

I ask the Court to inquire of the general panel the question propounded as No. 6 of the proposed voir dire questions submitted to the Court to be asked by the defendants Julius Rosenberg and Ethel Rosenberg.

The Court: Well, I believe that I have covered that sufficiently, but if you want it asked that way I will ask it.

Mr. E. H. Bloch: I would appreciate that.

[fol. 81] The Court: Would the fact that a conviction in this case may subject the defendant to capital punishment prevent you in any way from performing your sworn duty as a juror, or basing your verdict solely on the evidence as presented here in court?

Mr. E. H. Bloch: I am sorry, your Honor, you may be reading from a different proposed question submitted by some co-defendant.

The Court: You are quite right.

Mr. E. H. Bloch: I am referring to one submitted by the defendants Rosenberg, No. 6.

The Court: All right I believe that has been covered generally but I will ask it again.

Mr. Saypol: May I interrupt. I have no objection to the question being asked but it seems to me that this in this text is a non sequitur, if you will read the first clause and the second.

The Court: Well, it is a non sequitur. Have you ever been the victim of any crime?

(Prospective jurors indicated negatively.)

The Court: Have you ever been a witness in a criminal case?

A Prospective Juror: I have been the victim of a crime. I was in a holdup about three weeks ago.

By the Court:

[fol. 82] Q. Would the fact that you were the victim of a hold-up in any way prejudice you in serving in this type of case?

A. No, your Honor.

The Court: Has anybody had such an unpleasant experience with the administration of criminal law which would prevent them from keeping an open mind in this type of case, and giving a verdict based on the evidence and the evidence alone?

(Prospective jurors indicated negatively.)

Mr. E. H. Bloch: I am going to ask your Honor to ask the jurors the question as set forth in item 22 of the proposed questions, submitted on behalf of the defendants Julius and Ethel Rosenberg.

The Court: That has been covered amply. I asked 21. 22 follows from that. And I also asked——

Mr. E. H. Bloch: It is the contemplation part of it, your Honor, that I don't believe has been covered.

The Court: I asked, Have you ever been subject or do you expect to be subject?

Mr. E. H. Bloch: I am sorry. Then my memory didn't serve me correctly. I will withdraw the request. I am going to ask your Honor to ask the question set forth at 51.

The Court: That has been covered substantially.

Mr. E. H. Bloch: I respectfully except. I ask your [fol. 83] Honor to ask the questions set forth in Nos. 61 and 62 of the proposed questions submitted by the Rosenbergs.

The Court: That is declined.

Mr. E. H. Bloch: I respectfully except. Will your Honor bear with me. I am just going down this and trying to save time here. I ask your Honor to ask the question set forth as item No. 68.

The Court: Oh, I asked it just that way as a matter of fact.

Mr. E. H. Bloch: I am sorry.

The Court: I asked that.

Mr. E. H. Bloch: I am sorry. I misstated it. I meant 69.

The Court: Oh, I decline it. I will deal with that on their deliberations subsequently.

Mr. E. H. Bloch: I respectfully except. I ask your Honor to ask the question set forth in 70?

The Court: No, I decline to ask it in that fashion. I think I have covered it generally and will cover this matter of the verdict of the jury subsequently in my charge.

Mr. E. H. Bloch: I respectfully except. And I ask with respect to item 74.

The Court: That is declined.

Mr. E. H. Bloch: I respectfully except. Now I ask your [fol. 84] Honor to ask Juror No. 4, whether in the course of his duties as a policeman for eighteen years he ever prosecuted a defendant and appeared as a witness against him in court?

The Court: You may consider that question put to you.

Prospective Juror No. 5. Will you repeat that last part?

By the Court:

Q. Did you ever appear as a witness, as a prosecuting witness in court during the years you were a police officer?

A. I did.

Mr. E. H. Bloch: I just call your Honor's attention: there must be a conflict between this last question and the question which you propounded to the general panel where you specifically asked each and every juror whether he had ever been a witness in court.

Prospective Juror No. 5: Your Honor, could I speak on that?

The Court: Yes.

Prospective Juror No. 5: You asked the question in a criminal case. No, I wasn't called as a witness in these criminal cases. Therefore I did not appear as a witness. So it is clear, that question, the way I answered it.

[fol. 85] By the Court:

Q. What are you referring to now?

A. He is talking maybe about a misdemeanor.

Q. That is the way you understood it? In other words, you have never appeared as a prosecuting witness in a so called felony case?

A. To my knowledge, no, sir, I wasn't called.

Mr. E. H. Bloch: But in misdemeanor cases?

Prospective Juror No. 5: Yes.

Mr. E. H. Bloch: Now I would like to ask the Court to ask the same juror about how many times he appeared as

a witness during his service as a policeman against defendants in these cases?

The Court: Give us a rough estimate.

Prospective Juror No. 5: Your Honor, would you call a summons case a misdemeanor case?

The Court: Give counsel the benefit of the doubt and call it a misdemeanor case.

Mr. E. H. Bloch: Well, I will accept that, of course.

By the Court:

Q. About how many, approximately?

A. Well, if you are including summonses, your Honor——

Q. I will include summonses?

A. Several hundred.

Mr. E. H. Bloch: May I ask your Honor whether I should [fol. 86] exercise a challenge for cause now at this time with respect to this juror or continue asking your Honor to ask other jurors specific questions?

The Court: No. I want you to first ask whatever questions you want. Then you will take your three challenges together.

Mr. E. H. Bloch: Will you bear with me one moment? I would like your Honor to ask Juror No. 2, who has stated that he has a brother who is on the police force in a small town, I believe he said, whether he has ever discussed with his brother policeman the type of work his brother does, or the evidence in any cases where his brother testified, or generally whether he has ever discussed with his brother the problems of law enforcement.

The Court: You may consider that question put to you.

Prospective Juror No. 2: Well, sir, he isn't on the force very long. I think probably it mostly has to do with traffic control.

Mr. E. H. Bloch: What?

Prospective Juror No. 2: Traffic control. That is, he usually rides in a patrol car on the streets of the town and of course controls traffic.

The Court: He says he isn't on the force very long and his problems deal mostly with traffic control.

[fol. 87] Mr. A. Bloch: May I ask, if your Honor please, that the questions submitted by the defendants Rosenberg

be marked for identification just for the purposes of the record.

The Court: All right.

(Marked Defendants' Exhibit A for identification.)

Mr. E. H. Bloch: With respect to Juror No. 12 I would like the Court to ask the Juror whether or not he subscribes to the editorial policy of his employer?

The Court: Well, now, what have you reference to? Editorial policy with respect to what?

Mr. E. H. Bloch: With respect to foreign policy of the United States and the policy adopted by his employer generally in the field of international relations.

The Court: You may consider that question put to you.

Prospective Juror No. 12: In general, I believe I do.

Mr. E. H. Bloch: I would like the Court to ask this same juror whether or not during his association as an employee of Time-Life Magazine he knew or came to know Whitaker Chambers?

Prospective Juror No. 12: I knew him by sight only.

Mr. E. H. Bloch: I think that is all on that juror.

[fol. 88] Mr. Kuntz: If your Honor please, may I on behalf of the defendant Sobell join in the request to ask the jurors those questions that Mr. Bloch covered which your Honor denied, and may we have the benefit of an exception to your Honor's ruling.

The Court: Well, I don't see why that should inure to your benefit. You submitted separate questions, and I believe I have covered practically every one of those, if I haven't covered every one.

Mr. Kuntz: That is true, but if you will notice, there are two sets of questions. We purposely took Mr. Bloch's questions and were careful not to have repetition. In other words merely have a copy——

The Court: They may inure to your benefit for this particular purpose, but if you want us to consider this case as a separate case, as far as Sobell is concerned, you submit separate questions as you have here. I think it is fair to assume that you want all your particular questions asked and that you don't have any particular interest in the questions that Mr. Bloch wants asked.

Mr. Kuntz: I take it of course that we didn't want repeti-

tion of these questions and we started out with that purpose in mind.

The Court: I will permit any objection which has been made with respect to the questions that I refused to ask [fol. 89] in the form requested, to inure to your benefit.

Mr. Kuntz: Thank you very much.

Mr. E. H. Bloch: If the Court please, I challenge Juror No. 4 for cause.

The Court: Denied.

Mr. E. H. Bloch: I respectfully except. I challenge Juror No. 2 for cause.

The Court: Denied.

Mr. E. H. Bloch: I challenge juror No. 12 for cause.

The Court: Denied.

Mr. E. H. Bloch: Exception. I now exercise peremptory challenges as against Juror No. 4——

The Court: You waive the other two, you know.

Mr. E. H. Bloch: No, I am not finished.

The Court: Go ahead.

Mr. Kuntz: We are put in a somewhat anomolous position. I think your Honor has ruled that we are to exercise peremptory challenges jointly.

The Court: Correct.

Mr. Kuntz: And I suggested to Mr. Bloch before he exercised any peremptory challenges——

The Court: That he consult you.

Mr. Kuntz: Yes.

[fol. 90] (Mr. E. H. Bloch and Mr. Kuntz confer.)

Mr. Saypol: There is evidently some slight degree of artificiality here but I suggest if counsel approach the bench perhaps I can help the defendants on this question of exercising their challenges.

The Court: No, I don't think we need to do that.

Mr. E. H. Bloch: All right. There seems to be concurrence now, your Honor. The defendants peremptorily challenge Jurors Nos. 2, 4 and 12.

The Court: All right. Now in the future on your challenges I ask you to please consult one another.

(The following jurors were excused: Baring-Gould, Jordan and Cuff.)

Carl O. Roach, Raymond Mitchell and Emil Hauser were called as prospective jurors.

The Court: Now, Mr. Roach, Mr. Mitchell and Mr. Hauser, did you hear everything that transpired in court today?

(Prospective Jurors 2, 4 and 12 nodded in the affirmative.)

The Court: Is there anything that either of you care to volunteer to the Court?

Prospective Juror No. 2: Firstly, I am a graduate of the College of the City of New York.

[fol. 91] By the Court:

Q. You heard me state that I understand that some of the defendants are graduates of City College of the City of New York. Would that fact in any way prejudice you either for or against?

A. No, sir, it would not. Secondly, for a period of three months I was a subscriber to the publication, National Guardian.

Q. What period of time did that cover?

A. I believe it was in 1950, sir.

Q. And by reason of what you read in the National Guardian have you become so prejudiced and biased against the Government or the defendants that you could not keep your mind open or render a verdict based on the evidence?

A. No, sir.

Q. Is that all?

A. That is all.

By the Court:

Q. Yes, Mr. Mitchell.

A. I think I would be biased.

The Court: All right. You are excused.

(Raymond Mitchell excused.)

JAMES A. GIBBONS was called as a prospective juror.

By the Court:

Q. Mr. Gibbons, did you hear everything that transpired in the court?

A. Yes, I did, your Honor.

[fol. 92] Q. Is there something you want to volunteer?

A. Yes. I think you asked a question there about belonging to religious organizations or groups?

Q. Yes.

A. Or labor oragnizations?

Q. That is right.

A. I am connected with the CIO.

Q. Well, my question went further than that. It asked whether there was anything advocated at any of these groups either pro-Communism or against Communism which has become so embedded in your mind that you feel you can't conscientiously keep your mind open and render a verdict here based on the evidence?

A. Oh, no. I have a clear mind.

Q. Mr. Hauser?

A. No questions.

Q. I notice you have a very unusual occupation. You are a trouble man.

A. That is a sort of title. It means switchman.

Q. By whom are you employed?

A. New York Telephone Company.

Q. How long have you been with them?

A. Twenty-seven years.

Q. Are you married?

A. Widower.

Q. Any children?

A. One child.

Q. How old is the child?

A. Eight years of age.

Q. Goes to school, I take it?

A. Yes.

Q. Mr. Gibbons, what is your occupation?

[fol. 93] A. Bookkeeper and accountant.

Q. For whom?

A. New York City Omnibus.

Q. How long have you been with them?
A. Twenty-eight years.
Q. Are you married?
A. Married, two children.
Q. How old?
A. One six and one ten.
Q. Both go to school?
A. Yes.
Q. Your wife is home?
A. Yes.
Q. Mr. Roach?
A. I am an engineer, sir, employed by the New York State Department of Labor. I am married. I have two children. They are of pre-school age.
Q. Your wife is home or does she work?
A. She is home.

Mr. Kuntz: If your Honor please, I don't recall whether I took exception to your Honor's ruling on behalf of Sobell, failing to excuse——

The Court: Those three jurors?

Mr. Kuntz: On the challenge for cause, may we have an exception, sir.

The Court: Yes.

Mr. Kuntz: Thank you, sir.

(Carl O. Roach and Mrs. Edna S. Pincous excused.)

(Richard C. Dennis and Mrs. Esther Field called as prospective jurors.)

The Court: Mrs. Field and Mr. Dennis have you heard [fol. 94] everything that transpired so far in court?

(Prospective jurors nod in the affirmative.)

The Court: Is there anything either of you care to volunteer to the Court?

Mrs. Field: My son-in-law went to City College, my uncle; my father was born in Hungary. My husband was born in Russia.

By the Court:

Q. Your husband was born in Russia?
A. Yes.

Q. Well, now, let us take the birth of your husband in Russia. How long has he been in this country?

A. I don't know exactly. Quite a long time.

Q. Is he a naturalized citizen?

A. I believe so.

Q. By reason of your son-in-law having gone to City College and what other relative was it?

A. My uncle.

Q. Your uncle having gone to City College?

A. Yes.

Q. And your husband's birth in Russia?

A. That would have no bearing.

Q. That would have no bearing whatsoever on your judgment of the case based on the evidence?

A. It would have no bearing.

Q. Now, Mr. Dennis, you say there is nothing you care to volunteer?

A. No.

Q. You are an engineer?

A. Yes.

Q. Employed by whom?

[fol. 95] A. They were consulting petroleum engineers.

Q. How long have you been with them?

A. I have been in the business twenty years. For myself only about three or four months.

Q. What was the name of the concern?

A. H. J. Wasson.

Q. You were employed by them?

A. Yes.

Q. Are you married?

A. Yes, sir.

Q. Wife at home?

A. Working.

Q. Your wife works for whom?

A. United States Pulp Producers Association.

Q. Have you any children?

A. No.

Q. Mrs. Field, what does your husband do?

A. He is a rayon converter.

Q. What is the name of his concern?

A. White Mills. I have two children.

Q. Two children, you say?
A. Yes. One married and one goes to college.
Q. What did you do prior to becoming a housewife?
A. I was a secretary.
Q. How long ago was that?
A. Well, over 25 years ago.

Mr. E. H. Bloch: Your Honor, may I just ask a question for clarification. Your Honor has asked a number of general questions of the entire panel here. I am just wonder-
[fol. 96] ing whether or not the jurors who were not sitting in the box at the time your Honor propounded the questions understood that if they were to make an affirmative response or any kind of statement which would be responsive to your Honor's questions, that it was incumbent upon them to do so, even though they sat throughout the room and not in the jurybox.

The Court: I made it perfectly clear. I started by saying I wanted everybody behind the rail to listen so that in the event they were called they would immediately volunteer, upon taking a seat in the jurybox, any response to any of the questions I asked which they felt should call for a response. Now did you understand that to be the case?

Prospective Juror No. 1: Yes.

The Court: Did you, Mr. Dennis?

Mr. Dennis: Yes.

Mr. E. H. Bloch: I wanted to clarify that because I didn't want your Honor to ask the questions already covered which would be repetitious.

The Court: Nor would I intend to repeat them.

Mr. E. H. Bloch: If your Honor please, the defendants have agreed to challenge peremptorily Jurors Nos. 1, 5 and 7.

(Timothy A. Ryan, Matthew Farrell and Paul Piper excused.)

[fol. 97] (Marvin Galbraith Barrett, Mrs. Rhea Kobus and Emanuel Clarence Dean were called as prospective Jurors.)

Mr. E. H. Bloch: Your Honor, I don't want to seem to harp on the same point but some unclarity exists in my

mind about these general questions. For instance you asked all of the jurors whether or not they were ever in the armed forces or are in the armed forces or had any relatives in the armed forces. Of course, I consider that a quite relevant question as to the partiality or impartiality of the jurors. I am not at all convinced despite your implicit instructions that so many jurors here would keep silent outside of the jurors who have been seated.

The Court: You don't understand. I told them not to answer until they go into the jurybox.

Mr. E. H. Bloch: Well, if that is the case, I would like your Honor to repeat that question concerning the armed forces.

The Court: Oh, no. It is perfectly clear and I am sure everybody in the courtroom got it, and I made it clear the second time when you asked that I tell these jurors behind the railing. I told them when we started to make a note of anything I asked that you think calls for a reply, and then only if you are sent for and put in the jurybox are [fol. 98] you to reply.

Mr. E. H. Bloch: Perfectly all right.

The Court: Mr. Barrett, Mrs. Kobus and Mr. Dean, is there anything you care to volunteer? First let me ask you if each of you heard all the proceedings in court this morning?

(Prospective jurors nod in the affirmative.)

The Court: Did you understand that you are to volunteer answers to any of the questions I asked that require some explanation or answer?

(Prospective jurors nod in the affirmative.)

The Court: You did understand that?

(Prospective jurors nod in the affirmative.)

By the Court:

Q. Now let me hear from you, Mr. Barrett?
A. I don't believe in capital punishment.

The Court: You may be excused.

(Marvin G. Barrett excused.)

(George Andrew Myers was called and took his seat as a prospective juror.)

The Court: We will take a short recess at this point and you return to the jurybox in the respective positions in which you are sitting. The ladies and gentlemen of the panel will return to their respective places after the recess.

(Short recess.)

[fol. 99] The Court: Now, Mr. Myers, Mrs. Kobus and Mr. Dean, I am going to ask you all once again, did you hear everything that transpired in the court this morning?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything that you want to volunteer to the Court?

Mr. Myers: (Juror No. 1) Your Honor, I served as a sergeant in the United States Army and I was employed by the Government as a guard in the Brooklyn Navy Yard, in 1947.

By the Court: (To Juror No. 1)

Q. What period of time were you in the Army?

A. From 1944 to 1946.

Q. Now, despite that service and despite that employment, do you feel you can keep your mind open in this case after everything you have heard and render a verdict based on the evidence and the evidence alone?

A. Yes, sir.

The Court: All right, you may be seated.

Is there anything that Mrs. Kobus wants to volunteer, or Mr. Dean?

(Prospective jurors indicated in the negative.)

By the Court:

Q. Now, Mr. Myers, I notice that right now you are a [fol. 100] stock manager for the W. T. Grant Company?

A. Yes, your Honor.

Q. How long have you been so employed?

A. Two years.

Q. Are you married?
A. Yes, sir.
Q. How old are your children?
A. I have one, seven.
Q. Is your wife employed?
A. She is.
Q. What type of employment?
A. She is a matron at Coro, Inc., a jewelry firm.
Q. Mrs. Kobus, are you married?
A. Yes, sir.
Q. Is your husband alive at the present time?
A. Yes, sir.
Q. What does he do?
A. He is in a millinery concern.
Q. What is the name of his concern?
A. Archie Kobus.
Q. Have you some children?
A. One child, one daughter.
Q. She is married, is she?
A. Married.
Q. What does her husband do?
A. He goes to college.
Q. Which college?
A. Phoenix, Arizona.
Q. What is that, University of Arizona?
[fol. 101] A. Yes, sir.
Q. Mr. Dean, what do you do?
A. I work for the Consolidated Edison Company.
Q. Will you speak up a little louder, please?
A. Consolidated Edison Company, demonstrator.
Q. How long have you been with them?
A. 11 years.
Q. Are you married?
A. No, I am single.
Q. Do you live with your folks?
A. No, I have my own place.
Q. Where do you live?
A. I live at 231 East 75th Street.

The Court: Very well.
The Clerk: George Andrew Myers and Mrs. Esther Fields excused by the Government.

George Tacke, No. 1; Albert Wallace, No. 3.

(Mr. Tacke and Mr. Wallace, prospective jurors Nos. 1 and 3, respectively, took their seats in the jurybox.)

The Court: Mr. Tacke and Mr. Wallace, have you heard everything that transpired in court?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything you care to volunteer?

(Prospective juror No. 3 raises hand.)

[fol. 102] The Court: Yes, Mr. Wallace?

Mr. Wallace: (Juror No. 3) At one time I was employed by the United States Government as a tractor operator.

The Court: As a what?

Mr. Wallace: Tractor operator.

The Court: Where at?

Mr. Wallace: Brooklyn Army Base.

Mr. Tacke: (Juror No. 1) I was a member of the armed services during the war.

By the Court:

Q. What branch?
A. United States Army.
Q. In what capacity did you serve?
A. Enlisted man.

The Court: Now, do either of you gentlemen feel you can serve without any mental reservations by reason of your former employment or former service in the Army?

(Prospective jurors nodded in the affirmative.)

The Court: Is the answer Yes?

Mr. Tacke: That's right, sir.

By the Court:

Q. Mr. Tacke, you are with the Burrows Wellcome Company?
A. I am a purchasing agent.
Q. That is a drug house, isn't it?
A. That's right, sir.

[fol. 103] Q. Are you married?
A. I am.
Q. Any children?
A. No children.
Q. Is your wife employed?
A. She is.
Q. By whom?
A. She is a secretary for Air Reduction Sales Company.
Q. Mr. Wallace, you are a longshoreman?
A. I am.
Q. For the United Fruit Company?
A. That's right.
Q. How long have you been so engaged?
A. Pretty near four years.
Q. Are you married?
A. I am.
Q. Is your wife employed?
A. As a domestic.
Q. As a domestic?
A. Yes.
Q. Have you any children?
A. One.
Q. School age?
A. Yes.

The Court: Very well.

Mr. E. H. Bloch: If the Court please, on this third round all of the defendants have agreed to challenge peremptorily Jurors Nos. 1, 2 and 10.

The Court: Very well.

The Clerk: George Tacke, Richard C. Dennis and Victor Miclo excused by the defendants.

Albert E. Molsahn, No. 1, Morris Haber, No. 2, John C. Moorcroft, No. 10.

[fol. 104] (Messrs. Molsahn, Haber and Moorcroft, prospective jurors 1, 2 and 10, respectively, took their seats in the jurybox.)

The Court: Mr. Molsahn, Mr. Haber and Mr. Moorcroft, did you hear all of the proceedings in court today?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything that you care to volunteer?

Mr. Molsahn: (Juror No. 1) I believe my naval service in the last war would make me prejudiced.

The Court: Would make you prejudiced?

Mr. Molsahn: Yes, sir.

The Court: You may be excused.

The Clerk: Albert E. Molsahn excused.

John C. Gorman, No. 1.

(Mr. Gorman, prospective juror No. 1, took his seat in the jurybox.)

By the Court: (To juror 1)

Q. Mr. Gorman, is there anything you care to volunteer?

A. I am a veteran of the last World War.

Q. Despite that service, would you still be able to keep your mind open and adjudicate this case on the evidence as it is?

A. Yes, your Honor.

[fol. 105] Q. (To juror 2) How about you, Mr. Haber, can you decide this case on the evidence?

A. Yes, sir.

Q. (To juror 10) And you, Mr. Mooreroft?

A. I am a veteran, too, sir.

Q. Despite your service—in what branch was that?

A. Army, sir.

Q. Could you, despite your service in the Army, decide this case on the evidence and the evidence alone?

A. Yes, sir.

Q. Mr. Gorman, I notice you are employed by the American Cyanamid Company?

A. That's right, sir.

Q. In what capacity?

A. Accounting supervisor.

Q. Are you married?

A. Yes, your Honor.

Q. Have you any children?

A. Two; nine and six months.

Q. Is your wife employed?

A. No, your Honor.

Q. Mr. Haber, tell us about your family, please.

A. I have three children; one is 20, one is 16 and one is 11.

Q. What does your son of 20 do?

A. He is now learning a trade, going to school, learning a trade.

Q. Learning what trade?

A. Carpentry.

Q. Carpentry?

A. Yes.

Q. What school does he go to?

A. He went to Public School 76.

Q. Where does he go now?

[fol. 106] A. Now he is on 23rd Street, Handicap Division.

Q. What is the name of the school?

A. Handicap Division.

Q. Oh, your son is handicapped?

A. That's right.

Q. How about your child of 16?

A. 16, goes to Evander Childs High School; and the girl of 11, P. S. 76.

Q. And your wife is at home?

A. In the house.

Q. You are a furrier?

A. That's right.

Q. With what company?

A. Rudisch & Hoffritz.

Q. How long have you been with that firm?

A. Three years.

Q. Were you a furrier before that, too?

A. That's right.

Q. With what firm were you?

A. Goodman & Sillinger, 13 years.

Q. Mr. Moorcroft, you are a brakeman with the Erie Railroad?

A. That's right.

Q. How long have you been employed as such?

A. Six years, sir.

Q. Married?

A. Yes, sir.

Q. Children?

A. Two children, one 15 and one 11.

Q. Both go to school?

A. Yes, sir.
Q. Your wife is a housewife?
A. Yes, sir.

The Court: Very well.
[fol. 107] The Clerk: Morris Haber and Albert Wallace excused by the Government.

George Henry Dunning, No. 2; Howard G. Becker, No. 3.

(Messrs. Dunning and Becker, prospective jurors 2 and 3, respectively, took their seats in the jurybox.)

By the Court:

Q. Gentlemen, you have heard all of the proceedings in court, have you?

(Prospective jurors nodded in the affirmative.)

Q. Is there anything either of you care to volunteer?

(Prospective jurors indicated in the negative.)

Q. Mr. Dunning, you are a heating consultant with the Scarsdale Supply Company?
A. Right.
Q. Are you married?
A. Yes, sir.
Q. How long have you been married?
A. 42 years.
Q. Have you any children?
A. Two married children, a boy and a girl.
Q. What does your son do?
A. He is general manager for the Circle Construction Company, in North White Plains.
Q. That is general construction, building construction?
A. Yes.
Q. And your daughter is a housewife?
[fol. 108] A. Housewife, yes.
Q. What does her husband do?
A. He is with a greeting card company in White Plains.
Q. Greeting card company?
A. Yes.
Q. (To juror No. 3) Mr. Becker, what is your employment?

A. I am with the Irving Trust Company, auditor.
Q. How long have you been with them?
A. 24 years.
Q. Married?
A. Yes, sir.
Q. How long?
A. 14 years.
Q. Is your wife at home?
A. Yes, sir.

The Court: Very well.

Mr. E. H. Bloch: If your Honor pleases, at this time I am going to ask your Honor to ask a question of those jurors who have stated that they were in the armed services in the last World War, and ask them whether or not they have any bias or prejudice against any men of the age group that were eligible for Selective Service but who were not in the active armed forces of the United States?

The Court: You may consider that question asked of you, and I want the entire panel to consider that question put to them also. If you didn't hear it, will you raise your hand, please.

[fol. 109] (Hands raised.)

The Court: Very well, the question is this: Would anybody have any prejudice or bias against anybody who is of the age group that could have seen service but didn't see service for any reason whatsoever? Would you have any prejudice or bias by reason of that fact?

(Prospective jurors and panel indicated in the negative.)

The Court: All right, there is no reply.

Mr. E. H. Bloch: Thank you.

If you Court pleases, on this fourth round, the defendants jointly exercise their privilege of challenging peremptorily Jurors Nos. 1, 2 and 12.

The Clerk: John C. Gorman, George Henry Dunning and Emil Hauser excused by the defendants.

Julian M. Walldorf, No. 1; Richard Booth, No. 2; Miss Cicili Amy Nugent, No. 12.

(Messrs. Walldorf, Booth and Miss Nugent, prospective jurors Nos. 1, 2 and 12, respectively, took their seats in the jurybox.)

The Court: These jurors who have just taken their place in the box, did you hear everything that transpired this morning?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything that you believe you could [fol. 110] volunteer to record?

(Mr. Walldorf raises hand.)

The Court: Yes, Mr. Walldorf?
Mr. Walldorf: I am opposed to capital punishment.
The Court: You may be excused.
The Clerk: Julian M. Walldorf excused by the Court.

Vincent J. Lebonette, No. 1.

(Mr. Lebonette, prospective juror No. 1, takes his seat in the jurybox.)

By the Court:

Q. Mr. Lebonette, did you hear everything that transpired in court?
A. Yes, your Honor.
Q. Is there anything you care to volunteer?
A. I am a veteran of the last World War, sir.
Q. Mr. Booth, is there anything you care to volunteer?
A. Not a thing, sir.
Q. Miss Nugent?
A. Nothing.
Q. Now, Mr. Lebonette, by reason of your service as a veteran, do you feel that you can render a verdict based on the evidence and the evidence alone in this case?
A. Yes, your Honor.
Q. I see you are a department manager for R. H. Macy & Company?
A. Yes, your Honor.
[fol. 111] Q. White Plains branch?
A. Yes.
Q. Are you married?
A. Yes, your Honor.
Q. How long have you been married?
A. Eight years.
Q. Is your wife employed?

A. No, sir.
Q. Mr. Booth, you are a caterer for the Seminole Club?
A. Yes, sir.
Q. What is that, a golf club?
A. No, it is a tennis club, sir.
Q. Forest Hills?
A. That's right.
Q. Are you married?
A. Yes, sir.
Q. How long have you been married?
A. 22 years, sir.
Q. Children?
A. No children, sir.
Q. Is your wife employed?
A. Yes, sir.
Q. By whom?
A. I beg your pardon, sir?
Q. By whom?
A. By a private family out in Cedarhurst, Long Island.
Q. In what capacity?
A. She is a housekeeper.
Q. What is the name of that family?
A. I beg your pardon?
Q. What is the name of the family?
A. Mrs. Hard.
Q. Hard?
A. That's right.
Q. Miss Nugent, you are a secretary, I notice, with the Sinclair Refining Company?
A. That's right.
Q. How long have you been with them?
[fol. 112] A. 25 years.

The Court: Very well.
The Clerk: Mrs. Rhea Kobus and George Darry Philbrick excused by the Government.
Fred C. Meister, No. 5; Miss Margaret A. Callaghan, No. 6.

(Mr. Meister and Miss Callaghan, prospective jurors Nos. 5 and 6, took their seats in the jurybox.)

The Court: These two jurors that have just taken the box, have you heard everything that transpired in court today?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything that you want to volunteer to the Court?

(Miss Callaghan raised her hand.)

The Court: Yes, Miss Callaghan?

Miss Callaghan: My father works in the Post Office and my brother is in the Marines.

By the Court:

Q. Your brother is in the Marines?
A. Yes.
Q. At the present time?
A. Yes.
Q. Where is your brother stationed now?
A. Camp Lejeune, North Carolina.

[fol. 113] Q. How long has your father been with the Post Office?

A. About 21 years.

Q. Now, by reason of your father's employment with the Post Office Department and your brother's service in the Marines, would it be embarrassing to you to serve in this kind of a case?

A. No.

Q. You feel you could keep your mind open and render a verdict here based on the evidence and the evidence alone?

A. Yes.

Q. (To juror No. 5) How about you, Mr. Meister?

A. Well, sir, I was in the armed services, and I believe you mentioned that if your plant was engaged in contract work with the Government, my plant is.

Q. Would that fact in any way embarrass you from serving in this case?

A. No, sir.

Q. Do you feel that you could keep your mind open and render a verdict based on the evidence and the evidence alone?

A. Yes, your Honor.

Mr. E. H. Bloch: I would like to ask the Court to ask Juror No. 5 how long his employer—I assume his employer, he says his plant—has been engaged in contract work for the Government of the United States?

The Court: How long is that, Mr. Meister?

Mr. Meister: (juror No. 5) Well, we were engaged during the last war and recently we have received several more [fol. 114] contracts.

Mr. E. H. Bloch: And I would like the Court to ask the same juror whether any of the employees of his employer were required to take loyalty oaths?

The Court: Were you required to take a loyalty oath?

Mr. Meister: No, your Honor.

Mr. E. H. Bloch: Any of the other employees?

Mr. Meister: Not to my knowledge.

Mr. E. H. Bloch: If the Court please, on this fifth round the defendants jointly challenge Jurors Nos. 6, 10 and 12.

The Clerk: Margaret Callahan, John C. Moorcroft and Cecili Amy Nugent excused by the defendants.

Robert S. Christie, No. 6; Hyman S. Scher, No. 10; Robert H. Batch, No. 12.

(Messrs. Christie, Scher and Batch, prospective jurors Nos. 6, 10 and 12, respectively, took their seats in the jury-box.)

The Court: Mr. Christie, Mr. Scher and Mr. Batch, did you hear everything that transpired in court today?

(Prospective jurors nodded in the affrmative)

The Court: Is there anything you gentlemen want to volunteer to the Court?

[fol. 115] (Mr. Scher, juror No. 10, raised his hand.)

By the Court:

Q. Mr. Scher?
A. Scher is the name.
Q. Yes?

A. I am Russian-born; a brother of mine is in the Government Service.

Q. What branch?

A. The Navy, that is, in official capacity in the Navy.

Q. What do you mean by that? What do you mean by "official capacity in the Navy"?

A. One of the official capacities in the Navy—the Navy Yard, I should say.

Q. Is he an enlisted man?

A. No.

Q. You mean——

A. Civilian, government employee.

Q. I see.

A. Also, I have a relative of mine attached to the Atomic Energy Commission. I don't feel I may be able to serve.

Q. What is your relative's name?

A. Same name.

Q. Scher?

A. That's right.

Q. What is his first name?

A. Harry, I believe, is his first name.

Q. Now, with all of that, do you feel you could serve in this case?

A. I honestly don't feel I could.

Q. You don't think so?

A. No.

The Court: All right, you may be excused, Mr. Scher.

[fol. 116] The Clerk: Hyman S. Scher excused by the Court.

The Court: Is there something you want to say, Mr. Batch?

Mr. Batch: (Juror No. 10) I had a cousin killed in this last war.

Mr. E. H. Bloch: I am sorry, your Honor, I can't hear him.

The Court: You will have to speak up.

Mr. Batch: I had a cousin killed in this last war and I honestly don't feel I could serve.

The Court: All right, you are excused.

The Clerk: Robert H. Batch excused by the Court.

Prospective Juror No. 1: I am sorry, your Honor, but

I neglected to say that I have a brother in the Service at the present moment and I have a brother that was in the last war, as well as myself.

By the Court:

Q. Well, you had told us that you had been in the Service?
A. Yes, I had been in.
Q. And you also have a brother who is in and one was in?
A. That's right.
Q. Does that qualify your previous answers in any respect?
A. It doesn't, no.

[fol. 117] The Clerk: Howard B. McGowan, No. 10; Miss Joan Moisseiff, No. 12.

(Mr. McGowan, No. 10, and Miss Joan Moisseiff, No. 12, prospective jurors, took their seats in the jurybox.)

The Court: Mr. McGowan, Miss Moisseiff, have you heard everything that transpired in court today?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything you care to volunteer to the Court?

Miss Moisseiff: Yes, sir; I have traveled in Czecho-Slovakia.

By the Court: (To Juror No. 12)

Q. How long ago was that?
A. Summer of 1948.
Q. In what capacity did you travel there, as a student, was it or——
A. No, no, just pleasure.
Q. On a pleasure trip by yourself?
A. No, with a friend.
Q. With a friend?
A. Yes.
Q. You are presently employed by Modern Plastics, Inc.?
A. Yes, sir.
Q. Well now, as the result of that trip which you made to Czecho-Slovakia, is there anything that would prevent you

from keeping an open mind in this case in deciding this case based on the evidence and the evidence alone?

[fol. 118] A. No, sir.

Q. Nothing at all?

A. No, sir. I have also submitted an application to the State Department for working for their International Information Service.

Q. Has that been acted on yet?

A. No, sir.

Q. You haven't been subjected to any loyalty probes, as far as you know?

A. No, sir.

Q. Would the fact that you might be subjected to it in any way alter your opinion?

A. No, sir.

Q. (To juror no. 10) Mr. McGowan?

A. I was in Russia in 1945.

Q. Doing what?

A. I was in the Navy.

Q. By reason of your service in Russia, did anything occur which would prevent you from rendering a fair verdict here to both sides, based on the evidence and the evidence alone?

A. No, sir; but I think my business connections may now influence me.

Q. What business connection is that?

A. I am with an investment banking firm.

Q. What is the name of that firm?

A. F. S. Mosely & Company.

Q. And you believe that your relationship with your firm might influence you?

A. Well, while I am considering the evidence, I probably unconsciously would be thinking of my contacts.

[fol. 119] The Court: Very well, you may be excused.

The Clerk: Howard B. McGowan, No. 10, excused by the Court.

Herbert F. Claudio, No. 10.

(Mr. Claudio, prospective juror No. 10, took his seat in the jurybox.)

By the Court: (To juror No. 10)

Q. Mr. Claudio, have you heard everything that has transpired?

A. Yes, sir; I have.

Q. Is there anything you want to volunteer?

A. Yes, my wife and I were both veterans of the last war. My father works in the Post Office. That is about all.

Q. You still feel that despite that service and despite your father's employment, you could sit in this case with an open mind and render a verdict based on the evidence?

A. I do.

Q. Mr. Christie, you are a salesman, I notice?

A. Yes, sir.

Q. With what company is that?

A. R. S. Christie & Co., self-employed.

Q. What do you sell.

A. Fastening devices, screws, nuts.

Q. Are you married, Mr. Christie?

A. Yes, sir.

Q. How long have you been married?

A. About 27 years.

[fol. 120] Q. Your wife is at home, is she?

A. At home.

Q. Children?

A. Two.

Q. What are their ages?

A. One is 27 and is employed by the National Carbon Company in Vermont; one is 25 and is employed by me.

Q. (To juror No. 10) And, Mr. Claudio, tell us about your personal life, your employment, and so forth.

A. I am employed by Graflex, Inc. I don't know if they have any Government contracts at all. I couldn't say.

Q. What do you do?

A. I am the camera service engineer.

Q. And you are married, you told us?

A. Yes.

Q. What does your wife do today?

A. My wife is at home.

Q. (To Juror No. 12) And, Miss Moisseiff, what is your employment?

A. I write for a trade magazine, Modern Plastics.
Q. What is the location of this company?
A. 575 Madison Avenue.

The Court: Well, I believe that we will suspend at this point. The Government exercises the next group of challenges; is that right?

[fol. 121] The Clerk: That's right, your Honor.

The Court: We will suspend at this point until 10:30 tomorrow morning. I am going to ask all of the jurors now in the box to take their respective positions tomorrow morning. Be prompt. As a matter of fact, I suggest you be here a few minutes before 10:30.

To all of the other ladies and gentlemen of the panel, I am going to ask you to return tomorrow morning again; be here a few minutes before 10.30 and in the meantime I ask you, please, not to discuss the case between yourselves, not to discuss it with anybody else, not to discuss it with members of your family, and above all, not to read anything in the newspapers about the case, not to listen to the radio about the case, not to watch television concerning this case. I know it is a difficult request for people to comply with, but service as a juror is not a very easy task, but yet a necessary task, so I am sure as good citizens you will all make every effort to comply with my request.

10.30 tomorrow morning.

(Adjourned to March 7, 1951, at 10.30 a.m.)

[fol. 122] New York, March 7, 1951; 10:30 o'clock a. m.

(11 jurors in box.)

The Court: I thought I made myself sufficiently clear that I wanted everybody to attend promptly at the sessions.

What is the name of the juror who isn't here?

The Clerk: Herbert Claudio, your Honor, Juror No. 10.

The Court: Will you call the name again, please.

The Clerk: Herbert Claudio.

(No response.)

The Court: Is there anything you want to say, Mr. Ciner?

Mr. Ciner: If I may?

The Court: Yes.

Mr. Ciner: There is something not quite clear in my mind, sir, and I think it may not be clear in reference to volunteering information on the questions asked yesterday, and that is, if in your mind you think it is prejudicial to the keeping of your mind open, whether you should volunteer the infor-
[fol. 123] mation or not?

The Court: I thought that that was certainly clear and I thought that I had made that clear more than one time. I must have asked that question a dozen times.

Now, if you can't keep your mind open and you are prejudiced before you even start to hear any evidence, I certainly want to hear it from you.

Mr. Ciner: Well, I have some information which I would like to give, which I didn't do yesterday, if that is the case and I am in error.

The Court: Information I should have privately?

Mr. Ciner: No, sir.

The Court: What is the information?

Mr. Ciner: Just volunteering the information that I was a World War II veteran.

The Court: Didn't you understand that I asked the jurors that time and time again, whether you were veterans?

Mr. Ciner: You did, sir.

The Court: Was there anything vague about the question?

Mr. Ciner: Well, my opinion or interpretation of it was, if it wasn't prejudicial in keeping your mind open you didn't have to answer.

[fol. 124] The Court: First I asked whether you were; then after I was advised whether you were, I then asked the question as to whether or not the fact that you served was prejudicial. See, the reason that I perhaps appear a little irritated is because jurors that are selected are going to sit here for several weeks, and if over a simple little thing like that they have difficulty in understanding something that seems to me was very clear—every juror took the box that I remember, who was a veteran, raised his hand immediately and said he had been a veteran.

Mr. Ciner: That wasn't clear in my mind, sir. May I do that now?

The Court: Yes, yes, I appreciate that. I am disturbed over the fact that you didn't understand that.

Mr. Ciner: I made notes of it yesterday, sir, and, as I say, I didn't understand it correctly.

The Court: Yes. Now, do you feel, in view of your service in the Armed Forces, that you still could keep your mind open and afford both sides here a fair trial?

Mr. Ciner: I don't think it would affect my mind, sir. It would keep it open.

There are some items I wanted to mention.

[fol. 125] Mr. Saypol: May I interrupt, if your Honor please? Does your Honor think it advisable to wait for the absent juror before we proceed?

The Court: No, it has nothing to do with the absence of the juror.

Mr. Saypol: I should like to note there is no objection on the part of the defendants to proceed.

The Court: Proceed.

Mr. Ciner: I have two nephews in the Armed Services, one in the Navy and one in the Army. I get the American Legion Monthly Magazine and my mother and father were born on the other side, in a country now called Czechoslavakia, but in that time it was known as Bohemia, back in 1875. They are both deceased now.

The Court: Now, would any of those facts in any way prejudice you or prevent you from keeping your mind open so that you can decide this case based on the facts and the evidence?

Mr. Ciner: It would not, sir; it wouldn't affect my mind in any way.

The Court: Very well, Mr. Ciner, you may be seated.

[fol. 126] Mr. E. H. Bloch: If the Court please, I would like to reserve until Juror No. 10 gets in the box, any proposed follow-up questions to the juror who has just spoken to the Court.

The Court: Juror No. 12?

Prospective Juror No. 12: I would like to add some additional information I didn't have time to yesterday. That is, I am opposed to capital punishment.

The Court: That is just a slight matter.

Prospective Juror No. 12: Well——

The Court: You may be excused.

(Miss Joan Moisseiff excused.)

The Court: If it is agreeable gentlemen with you, we will fill that space of No. 10 and I will deal with that juror later.

Mr. E. H. Bloch: No objection, your Honor.

The Court: Has the Government any objection?

Mr. Saypol: No, your Honor.

The Court: All right. Call two jurors.

(Herbert F. Claudio excused by consent.)

(Harry E. Pfaltz and Joseph G. Busser called as prospective jurors.)

The Court: Gentlemen, did you hear everything that transpired here yesterday and so far today?

The Prospective Jurors: Yes, sir.

[fol. 127] The Court: Is there anything you want to volunteer to the Court?

Mr. Christie: Yes.

The Court: Yes, Mr. Christie?

Mr. Christie: Yesterday I thought my age excluded any question of being a veteran and I didn't volunteer the fact that I was a veteran in the World War I.

The Court: All right. Despite that fact do you think you can keep your mind open here?

Mr. Christie: I do.

The Court: Mr. Pfaltz, and Mr. Busser?

Mr. Pfaltz: I am afraid I would be entirely too biased, your Honor.

The Court: You may be excused.

Mr. Busser, is there anything you want to volunteer to the Court? Do you think that you could afford a fair trial to the defendants here?

Mr. Busser: I can.

(Harry E. Pfaltz excused.)

(Walter J. Brown called as a prospective juror.)

By the Court: (Addressing Mr. Brown)

Q. Mr. Brown, you have heard all the proceedings so far?

A. Yes, your Honor.

Q. Is there anything you want to volunteer?

[fol. 128] A. No, sir. My father-in-law is engaged in Gov-

ernment work. He works for the Federal Bureau of Internal Revenue, the income tax.

Q. Your father-in-law?

A. Yes, sir.

Q. All right. How long has he been with them?

A. I don't know, sir.

Q. What is his name?

A. Ruderman.

Q. Has anything transpired in your relationship with your father-in-law in the discussion of cases or anything of that character which would cause you to be prejudiced here against the Government or against the defense?

A. No, your Honor.

Q. Mr. Busser, I believe you said you felt that you could keep your mind open here and give litigants, both sides here a fair trial?

A. Yes.

Q. Now Mr. Brown, I notice you are an aircraft mechanic.

A. Yes, sir.

Q. You work for the Transworld Airlines, is that right?

A. Yes.

Q. At La Guardia Field?

A. Yes, your Honor.

Q. Are you married?

A. Yes.

Q. How long have you been married?

A. About a year.

Q. Does your wife work?

A. No, sir.

Q. You may be seated.

Q. Mr. Busser, what is your occupation?

[fol. 129] A. Tool expediter.

Q. You are retired, are you?

A. Yes, sir.

Q. With whom did you work prior to this?

A. I didn't hear?

Q. By whom were you employed prior to this?

A. Brewster Aeronautical.

Q. When was that?

A. Up to 1944. 1940 to 1944.

Q. Are you married?

A. No, sir.
Q. You are a bachelor?
A. Yes, sir. I am a veteran of the First World War.
Q. Has your service as a veteran of the First World War left you with any prejudice in this type of matter?
A. No, sir.

(Robert S. Christie and Charles M. Boyle excused by the Government.)

(Ely Morton Honig and Clement J. Tormey called as prospective jurors.)

The Court: Gentlemen, have you heard everything that has transpired so far?
The Prospective Jurors: Yes, your Honor.

By the Court:

Q. Mr. Honig, is there something you want to volunteer?
A. I have a younger brother-in-law in the Service, sir and I lost a very good friend of mine.
Q. In the Service?
A. In the Service.
[fol. 130] Q. Now, despite the two facts that you have just revealed do you feel that you could serve with propriety in this case?
A. No, sir.
Q. You don't?
A. No.
Q. Mr. Tormey, is there anything you want to volunteer?
A. Yes, your Honor. I am a veteran of the last World War and I also feel that I could not give the same credence to testimony which would be given by a member of the Communist Party.
The Court: Very well.

Mr. E. H. Bloch: Well, if the Court please, so that we dissipate any misimpression that may arise I would like to submit now that there is no evidence before the jury that the question of membership in the Communist Party is involved. Maybe I am anticipatory.
The Court: There isn't any evidence of any nature before the jury at this point.

Mr. E. H. Bloch: Except this, I don't want the jurors to get the impression that Communism is on trial. There are two defendants or three defendants on trial charged with the specific crime of espionage.

The Court: Well, wouldn't you rather have a juror reveal in advance anything that is in the innermost compartment of his brain that might in some session whatsoever be prejudicial to your clients?

[fol. 131] Mr. E. H. Bloch: Absolutely. The only reason my remarks are motivated is that the formulation of this prospective juror leaves me to believe that he is not aware of the issues in this trial.

The Court: I will say to all of the jurors that many questions have been asked of you. The purpose of those questions is to reveal any feeling you might have on the subject, any prejudice that you might have on the subject. For example, there was a long list of names read of newspapers, a long list of organizations read. Whether or not they will have any part in this trial, I do not know. But the purpose of the question was to search the mind of the jurors and to attempt if we could to ascertain the kind of thinking that the jury does.

Mr. Honig: I understood that was one of your questions.

The Court: Very well, Mr. Honig, I appreciate your statement, and Mr. Tormey. You may be excused.

(Ely Morton Honig and Clement J. Tormey excused.)

(Philip Frankel and Louis Corrigan called as prospective jurors.)

The Court: Gentlemen, I take it you have heard everything that transpired here?

Prospective Jurors: Yes.

[fol. 132] The Court: You both feel you could serve with propriety in this case?

Mr. Frankel: I think, your Honor, I might have subconscious fellow-traveler bias in view of my background. I am a World War I veteran.

The Court: I will accept your statement as made in good faith, and I hope that all of these statements are being made in good faith and not in effort to avoid what might seem to the jurors as an unpleasant task. The reason I say

that is that there seems to be a little more volunteering this day than there was yesterday, and I would assume that the jurors are doing this in good faith and I can't question it.

Mr. Corrigan: There are two situations I would like to call your Honor's attention to. In the first place, I attended C.C.N.Y. many years ago and while there joined a fraternity, of which I am quite sure one of the defense counsel here is a member. In other words, he is a fraternity brother of mine. I have not seen him or been in touch with him for perhaps 30 years, but I am quite sure that is the individual.

The Court: You feel that would not make any difference at all?

Mr. Corrigan: That would not. I simply wish to call that to your Honor's attention. I also wish to report that [fol. 133] I am a veteran of World War I; my son was in World War II. He is in the Naval Reserve and subject to recall at any time. I cannot conscientiously state that my mind is open, it isn't.

The Court: Very well. I can't conscientiously keep you. I will have to excuse you.

Mr. E. H. Bloch: If it is worth anything for the record, I am the person to whom Mr. Corrigan referred to as a fraternity brother.

The Court: All right.

The Clerk: Mr. Frankel and Mr. Corrigan excused.
Walter A. Kolbus, No. 6; William O. Melvin, No. 9.

(Walter A. Kolbus and William O. Melvin, prospective jurors 6 and 9 respectively, took their seats in the jury box.)

The Court: Gentlemen, I assume that you have heard everything that has transpired so far?

(Prospective jurors nodded in the affirmative.)

By the Court:

Q. Mr. Melvin, you are the gentleman with six children, aren't you?

A. That's right.

Q. And you have asked to be excused because you have nine dependents; is that right?

A. Yes, sir.

Q. You still feel like you would like to be excused by the [fol. 134] Court?

A. Because of a personal financial reason.

The Court: All right, we will excuse Mr. Melvin.

The Clerk: Mr. Melvin excused.

Herbert W. Craft, No. 9.

By the Court:

Q. Mr. Craft, you have heard everything, have you?

A. Yes, I have.

Q. Mr. Kolbus, do you feel that you could serve with propriety in this case?

A. Yes, sir.

A. Mr. Craft?

A. Yes, sir.

Q. You feel you could serve with propriety, Mr. Craft?

A. I am a veteran of World War I.

Q. Would that make any difference in your deliberations?

A. No, sir.

Q. Now, Mr. Kolbus, you are a stock auditor for the A. & P. Company; is that right.

A. A. & P. Tea Company.

Q. A. & P. Tea Company.

A. I might mention that my wife works for a law firm, if that has any bearing?

Q. What is the name of that firm?

A. Davis & Gilbert.

Q. Davis & Gilbert?

A. Yes, sir.

Q. Is there anything by reason of your wife's employment that you feel would make any difference?

A. No, sir.

[fol. 135] Q. In your deliberations here in this case?

A. No, sir.

Q. Have you any children?

A. No, sir.

Q. Mr. Craft, you are assistant treasurer of the Central Hanover Bank & Trust Company; is that right?

A. That's right.

Q. Are you married?

A. I am a widower with a daughter 24 years old, and in that connection, your Honor, I would like very much to come up to the bench and speak with you privately, if I may.

The Court: Very well, step up.

(The following proceedings took place at the Judge's bench, outside the hearing of counsel for the Government and counsel for the defendants.)

Mr. Craft: Your Honor, my daughter is a spastic. She is in the Bancroft School in New Jersey. Because of her brain condition, anything is liable to happen at any time, and I want you to know that, because if anything did happen, I naturally would have to ask the Court to release. . . . In a long case like this, why I——

The Court: Is she at a stage now where something acute is about to arise?

Mr. Craft: As you know, spasticism is an infection of the vasomotor section of the brain and it is a hard thing to—I mean, in point of time——

[fol. 136] The Court: You think you would rather be excused?

Mr. Craft: I think I would, your Honor, for that reason.

The Court: All right.

I am going to excuse Mr. Craft.

The Clerk: Mr. Craft excused by the Court.

Thomas J. Costello, No. 9.

(Mr. Costello, prospective Juror No. 9, took his seat in the jury box.)

By the Court:

Q. You have heard everything, Mr. Costello?

A. I have.

Q. You feel that you could serve with propriety in this case?

A. I do.

Q. There is nothing you care to review, or is there?

A. Well, I have several friends that are on the Police Department. I am a veteran of the last war. My two brothers are veterans. Before the war my two brothers

attended City College. I have been a member of the American Legion; I have read their magazines and I have read several of the papers and columnists that you mentioned yesterday.

Q. Which magazine did you read?

A. I said I read the American Legion magazine.

[fol. 137] Oh, the American Legion magazine?

A. Yes.

Q. You said you read some of the Columnists?

A. Yes.

Q. Which columnists?

A. Pegler, Winchell, O'Donnell.

Q. Very well. Now, with all that you have told us, do you feel that as a good citizen you take your place in that box and listen to the Court's instructions, listen to the evidence and decide this case based on the evidence and the evidence alone?

A. I do.

Q. You are a clerk with the Metropolitan Life Insurance Company; is that right?

A. That's right.

Q. Are you still so employed?

A. I am.

Q. Married?

A. Single.

Q. Do you live with your folks, do you?

A. I live with two sisters and a brother.

The Court: Very well.

Mr. E. H. Bloch: Will the Court kindly ask Juror No. 9, Mr. Costello, the following questions; One, whether or not he is a subscriber to the American Legion Monthly?

The Court: You may consider that.

Mr. Costello: I receive the American Legion magazine regularly. I think you might call it "monthly".

Mr. E. H. Bloch: I don't think there is anything technical [fol. 138] about the word "subscription".

Does he subscribe for it and pay for a subscription?

Mr. Costello: I haven't paid for it in the last few years.

Mr. E. H. Bloch: But you get it nevertheless?

Mr. Costello: Yes.

Mr. E. H. Bloch: Is he billed for the subscription?

Mr. Costello: I am not billed for the subscription.

Mr. E. H. Bloch: Has this juror read anything in the American Legion Monthly with respect to this case?

Mr. Costello: I have not.

Mr. E. H. Bloch: In connection with this juror's friendship with a number of policemen, I would like the Court to inquire a little more closely as to how close the friendship is and whether or not the policemen friends of this juror either discussed this case or generally discussed law enforcement?

The Court: Have your policemen friends discussed this case with you?

Mr. Costello: They have never discussed this case.

The Court: Have they discussed law enforcement, generally?

[fol. 139] Mr. Costello: Not particularly, no. They are just social friends.

Mr. E. H. Bloch: In connection with Juror No. 10, will the Court ask this juror whether or not he has ever discussed this case with his father-in-law, who works for the Bureau of Internal Revenue?

Prespective Juror No. 10: I have not, your Honor.

Mr. E. H. Bloch: Whether or not he has discussed this case with any of the relatives as a member of the family?

Prospective Juror No. 10: I have not.

Mr. E. H. Bloch: Whether or not he had any discussion with his father-in-law about serving as a juror in this case?

Prospective Juror No. 10: None whatsoever.

Mr. Kuntz: If your Honor please, may I ask your Honor to ask Juror No. 9 whether he has formed any opinion in this case or whether he has come into the box with any opinion in this case?

The Court: Well, that was asked, as you know, several times as part of my general questions, and I would expect them to volunteer that. I will ask it. Consider that asked of you.

Prospective Juror No. 9: I have no opinion.

Mr. E. H. Bloch: 5, 6 and 12 challenged.

The Clerk: Fred O. Meister, Walter A. Kolbus and Joseph [fol. 140] Busser excused by the defendant.

Charles W. Christie, No. 5; John Redmon Sewell, No. 6; Edward L. Carroll, No. 12.

(Messrs. Christie, Sewell and Carroll, prospective Jurors 5, 6 and 12, respectively, took their seats in the jury box.)

The Court: Gentlemen, I assume you have heard everything that has transpired in this case so far; is that right?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anybody here who cares to volunteer anything?

Mr. Carroll: Your Honor, I should like to volunteer three it*mes*, that I don't think would prejudice my opinion in this case. I served in the Army from 1940 to 1946. I visited Czechoslovakia in '33, before it had become a satellite country, so to speak, and I have a friend who is in charge of research in an organization called Radio Free Europe, and to that organization I contributed an article.

By the Court:

Q. What is that organization dedicated to?

A. Well, it is a part of the National Committee for a Free Europe and it beams propaganda material to the satellite countries of the Soviet Union.

[fol. 141] Q. Well, now, despite what you have revealed here, do you feel nevertheless as a good citizen, and knowing the American system of jurisprudence, that you can approach this case with an open mind and determine it based upon the evidence and instructions of the Court?

A. Yes, your Honor, I do.

Q. Now, Mr. Christie?

A. My company has contracts with the Government and I am also casually acquainted with a member of the Federal Bureau of Investigation.

Q. What is the name of your company?

A. Tide-Water Associated Oil Company.

Q. And your friend is a member of the FBI?

A. That's right.

Q. Now, have you discussed this case with this friend in the FBI?

A. No, with no one.

Q. Have you discussed law enforcement generally with this friend of yours?

A. No.

Q. Would the fact that your company is engaged in war work in any way embarrass you from service in this case?

A. No.

Q. You feel that you could keep your mind open and decide this case on the evidence?

A. Yes, I believe I could.

Q. Mr. Sewell?

A. I have two or three bits of information I would like to [fol. 142] convey to the Court. For a short period of time of three months I had a Civil Service position just before the war, and I went from that into the Navy, in which I served three and a half years. I also have a brother who is a veteran. The company which I work for, the Phillips Laboratories, does some work under Navy contract. I myself have not worked under these contracts but the company has.

Q. Do you feel that you could listen to the evidence in this case and decide the case based on the evidence and instructions from the Court?

A. Yes, sir.

Q. Now, Mr. Sewell, you are a physicist, I notice, with the Philips Laboratories?

A. Yes, sir.

Q. Are you married?

—. No, sir.

Q. Live with your parents, do you?

A. No; they are in Kentucky. I just have a room up here.

Q. Mr. Christie, you are a traveling auditor, I notice, for the Tide Water Associated Oil Company; are you married?

A. Yes, sir; two children, both school age.

Q. Mr. Carroll, you are a stage director?

A. Yes, your Honor. I taught for 11 years before the war in college, but during that time and afterward I was directing plays professionally.

Q. What school was that, what college?

A. That was Union College in Schenectady, New York.

[fol. 143] Q. Are you married?

A. No, sir; I am single.

Q. Do you maintain your own apartment?

A. Yes, I do.
The Court: Very well.

Mr. Saypol: Will the Court allow the Government a question voir dire in addition to those propounded?
The Court: Yes.
Mr. Saypol: Will the Court inquire of Juror No. 5, Mr. Christie, whether he has ever resided in Minnesota?
Mr. Christie: Minnesota? No, I never have.

The Clerk: William Ciner and Edward L. Carroll excused by the Government.
The Clerk: Joseph R. Murphy, No. 8; Mrs. Lillian Dietz, No. 12.

(Mr. Murphy and Mrs. Dietz, prospective Jurors 8 and 12, respectively, took their seats in the jury box.)

The Court: Mrs. Dietz and Mr. Murphy, have you heard everything that has transpired today and yesterday?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything you care to volunteer?
Mrs. Dietz: Just that I had a brother who served in the Armed Forces.

[fol. 144] By the Court:

Q. You have a brother who has served in the Armed Forces?
A. That's right.
Q. Would that fact in any way prevent you from keeping your mind open in this case?
A. No, it wouldn't.
Q. How about you, Mr. Murphy?
A. Well, I am in a place where I do quite a bit of business with the FBI.
Q. What is your business?
A. Furniture.
Q. You are in the furniture business and you do quite a bit of business with the FBI?
A. Yes, sir.
Q. Have you sold them furniture?
A. I have sold them furniture and I anticipate selling them in the future.

Q. Would that fact embarrass you from serving in this case?

A. I am afraid it might.

The Court: All right.

The Clerk: Joseph R. Murphy excused.

John Joseph Thompson, No. 8.

(Mr. Thompson, prospective juror no. 8, took his seat in the jury box.)

Q. Mr. Thompson, you have heard everything that has transpired in this case?

A. I have, sir.

Q. Do you feel that you can serve with propriety?

A. Yes, I could, sir.

Q. Have you anything you care to volunteer?

[fol. 145] A. Well, I was two years with the Post Office Department during the war. I have two brothers, veterans, and that is all, sir.

Q. Despite these facts, do you feel that you could keep an open mind in this case?

A. Yes, sir.

Q. You are a bank clerk with the Bowery Savings Bank?

A. That's right, sir.

Q. Married?

A. Yes, sir.

Q. How long have you been married?

A. 16 years, sir.

Q. Your wife is at home, is she?

A. No, she goes to business.

Q. Whom does she work for?

A. She is in the advertising business, sir.

Q. What is the name of the firm?

A. John J. McDevitt Company.

Q. Mrs. Dietz, I notice you are a housewife?

A. Yes, sir.

Q. What does your husband do?

A. He works for the Consolidated Edison Company.

Q. Consolidated Edison Company?

A. Yes, sir.

Q. Have you some children?

A. No, sir.

The Court: All right.

Mr. E. H. Bloch: Your Honor, in connection with Juror No. 5, I wonder whether you would inquire how long this [fol. 146] juror knows this FBI man and just how close the social relationship is?

Prospective Juror No. 5: Approximately two years. We are both members of a church organization. We don't visit back and forth socially; we only meet at this church organization approximately once a week. It depends on our attendance. Sometimes we see one another once a week; other times we don't.

The Court: And when you do meet, I take it, it is in connection with church activities?

Prospective Juror No. 5: That's right.

The Court: You don't visit one another's homes, as you pointed out?

Prospective Juror No. 5: Right.

Mr. E. H. Bloch: In connection with Juror No. 8, Mr. Thompson, I didn't hear how long he was employed by the Post Office?

The Court: Two years.

Prospective Juror No. 8: Two years, sir, from 1943 to 1945.

Mr. E. H. Bloch: I didn't hear that.

Defense asks that 6, 8 and 12 be excused.

The Clerk: Mr. Sewell, Mr. Thompson and Mrs. Dietz excused by the defendants.

Harold H. Axley, No. 6; Chauncey C. Miller, No. 8; Em- [fol. 147] mett C. Laird, No. 12.

(Messrs. Axley, Miller and Laird, prospective jurors 6, 8 and 12, respectively, took their seats in the jury box.)

The Court: Gentlemen, have you heard everything that transpired?

(Prospective jurors nodded in the affirmative.)

The Court: Is there anything any of you care to volunteer?

Mr. Axley: I was employed by the Government from 1942 to 1946.

By the Court:

Q. What branch?

A. I was in a civilian capacity for the Army, in the finance department. I have a brother that is in the Armed Forces.

Q. Do you still feel that you could keep an open mind in this case?

A. Definitely.

Q. Yes, Mr. Miller?

A. I am employed by the Board of Commissioners of Pilots, an agency of the State of New York. I served in the Army of the United States in World War I and my son-in-law was in the United States Air Force in World War II, and I have been a member of the American Legion.

Q. Despite all of that, do you feel that you could in good conscience keep your mind open in this case and decide the [fol. 148] case based on the evidence?

A. Yes, sir.

Q. Mr. Laird?

A. I have a brother-in-law who is a retired employee of the Bureau of Internal Revenue. I had a brother in the war, last World War. I have had occasion to be in contact with members of the FBI, in connection with employees who have formerly worked for the Texas Company and have now gone into work in defense plant work.

Q. You mean, the FBI has communicated with you?

A. Communicated with me, yes.

Q. Concerning the background of these individuals?

A. That is correct.

Q. Now, by reason of your association with the FBI, has anything transpired which would prevent you from keeping your mind open in this type of case?

A. No, sir.

Q. And despite all you have told us, the relationship with your brother-in-law, who is a former member of the Internal Revenue Bureau—your brother-in-law, was it?

A. Yes, that's right.

Q. And these other facts that you have related today, do you still feel that you can decide this case based on the evidence?

A. Yes, sir.

Q. I notice you are an engineer with the Texas Company?

A. That's right.
Q. How long have you been with them?
A. 28 years.
[fol. 148a] Q. Are you married?
A. Yes, sir.
Q. How long have you been married?
A. I have been married 27 years.
Q. Your wife is at home, I take it?
A. That's right.
Q. Have you some children?
A. I have two married daughters and one son who is in high school.
[fol. 149] Q. What are the occupations of your sons-in-law?
A. One of the sons-in-law is an investment broker in New York and the other is employed by the Texas Company as an engineer.
Q. Mr. Miller, you are Secretary of the Board of Commissioners of Pilots. How long have you been secretary of that board?
A. Since May, 1931.
Q. I take it you are a former pilot?
A. No, sir, I have never been a pilot.
Q. Are you married?
A. Yes, sir.
Q. Any children?
A. One daughter, married.
Q. What does her husband do?
A. He is a salesman for a woolen house, I think.
Q. Mr. Axley, your occupation?
A. I am self-employed. I run a restaurant.
Q. You run a restaurant?
A. Yes.
Q. Married?
A. Yes, sir.
Q. How long?
A. Fourteen years.

(Board with names of jurors handed to Government counsel.)

Mr. Saypol: I will pass this round, if your Honor please.
The Court: You waive these two?

Mr. Saypol: I waive these two.

The Court: Well, at this point we will take a short recess, [fol. 150] ladies and gentlemen. Return very shortly.

(Short recess.)

Mr. E. H. Bloch: If the Court please, I just want to check my records here. Have we exhausted 21 by this time?

The Court: Yes, you have. You have nine challenges left.

Mr. E. H. Bloch: I would like the Court to ask Juror No. 12 whether by reason of his connection with his brother-in-law who I believe he stated was a retired member of the FBI——

The Court: Internal Revenue.

Mr. E. H. Bloch: Was it Internal Revenue? Whether or not he has formed any impression about Government investigators.

Prospective Juror No. 12: I would say that my brother-in-law was an accountant in the Internal Revenue Bureau and as a matter of fact I don't see him very often. He doesn't live nearby. So I don't know.

Mr. E. H. Bloch: Well, that wasn't quite responsive.

The Court: Well, I think it is responsive. He is telling you that he really hasn't formed any impression. That his brother-in-law was really an accountant rather than an investigator.

[fol. 151] Gentlemen, I would appreciate it if you could expedite this on both sides so that we can have our jury by the luncheon recess if possible.

Mr. E. H. Bloch: We ask that Jurors Nos. 9, 11 and 12 be excused.

(Mr. Costello, Mr. Friedlander and Mr. Laird excused by the defendants.)

(Patrick J. Carroll, Herman E. Meisner and James M. Crawford called as prospective jurors, taking seats 9, 11 and 12 respectively.)

The Court: Gentlemen, have you heard everything that has transpired in this case?

Prospective Jurors: Yes.

The Court: Is there anything that anybody wants to volunteer to the Court? I will hear from Mr. Carroll first.

Mr. Carroll: I have a son in service in the war and he is now in the Reserves. He knows the U. S. Marshal very well, Mr. Carroll.

By the Court:

Q. Is he related to you?

A. No, he is not related to me, and I had business relationship with the Federal Government during the war, my company.

Q. What branch of the Government?

A. I had a contract with the Procurement Division, Quartermaster's Corps.

[fol. 152] Q. You are with the Morton Salt Company?

A. That is right, your Honor. I know a young man connected with Counterattack. He was a friend of my son. I have read Pegler, O'Donnell, practically all the publications mentioned. My own personal thoughts combine to the feeling that I could not—I feel that I might not be an impartial juror.

The Court: Very well, we will let you go, Mr. Carroll.

(Patrick J. Carroll, No. 9, excused.)

(Alfred Seymour Rocin, called as a prospective juror and takes seat No. 9.)

By the Court:

Q. Have you heard everything that transpired, Mr. Rocin?

A. Yes.

Q. Is there anything you care to volunteer?

A. Yes, your Honor.

Q. What?

A. I am a veteran of the last war and I don't think I have an open mind in this case.

Q. Well, now, I hope you are being sincere about that. Are you, Mr. Rocin?

A. Yes.

Q. You are not doing that because you don't want to serve?

A. No, sir.

The Court: Very well, you will be excused.

(Alfred Seymour Rocin excused.)

[fol. 153] (Robert C. Bell, called as a prospective juror, takes seat No. 9.)

By the Court:

Q. Mr. Bell, have you heard everything that transpired?

A. Yes, I have.

Q. Is there anything that you want to volunteer?

A. Well, I have followed the accounts of the case in various newspapers and I don't feel I can give an unprejudiced opinion.

Q. Do you feel because you have read a newspaper that you can't do your job as a citizen and dismiss that and follow the instructions of the Court?

A. I believe it has left a very permanent impression in my mind.

The Court: You are excused.

(Robert C. Bell excused.)

(James E. Sexton, called as a prospective juror, takes seat No. 9.)

By the Court:

Q. Is there anything you want to say, Mr. Sexton?

A. Yes, there is, your Honor.

Q. What is it?

A. In the first place, I was in the United States Army. During the course of that service I was in Czechoslovakia. I am a member of the Catholic War Veterans and during the course of my study at school I did hear lectures regard-[fol. 154] ing the fallaciousness of Communism. Regarding capital punishment, while I am not opposed to it, I would prefer not to serve as a juror with the sentence of death to be meted out by the United States. This however, does not constitute an unwillingness on my part to serve as a juror if so selected.

Q. Well, I think there are some things that need clarification. In the first place, in the matter of punishment, and I want all the jurors to hear this: your function is merely to pass upon the evidence. As I said yesterday, you add a column of figures; that is what you do. And

when you are through adding that column of figures you have a result and then it is your job to bring in that result. What happens after that result is brought in is completely a matter for me, is completely within my province. There is nothing mandatory about this statute. I can if I see fit in accordance with the facts of the case, impose the death penalty. I can also, if I see fit, impose a prison sentence. The Court has wide latitude. I want that to be clear in the minds of the jurors. Their verdict does not necessarily carry with it any mandatory sentence. Now with that in mind, does that in any way change your point of view with respect to that phase of your objection?

[fol. 155] A. Well, as I stated, your Honor, it was only a preference on my part not to serve if the death sentence could be given out.

The Court: Well, I think, Mr. Sexton, we had better excuse you. You would be sitting there and you would be rather unhappy, wouldn't you, during the course of the trial?

Mr. Sexton: Well, as I said before, your Honor, it wouldn't interfere with my duties as an American citizen.

The Court: You still feel in your own mind that you could despite these things you have related here today, decide this case on the evidence?

Mr. Sexton: I feel that I could.

Q. And keep your mind open?

A. That is right.

Q. Realizing, would you, during your deliberations that you had nothing to do with the sentence or the punishment?

A. I would feel so, your Honor.

Q. Well, we will permit you to remain.

A. I have some other points, your Honor.

Q. Yes?

A. I have friends who are police officers. They are only casual acquaintances. It would not affect me in any way in serving on the jury. In the business where I am employed we do have to work with the Army. On all of these I do not feel I would be biased or prejudiced.

[fol. 156] By the Court: (To Juror 11)

Q. Very well, Mr. Meisner.

Mr. E. H. Bloch: Your Honor, I am sorry to interrupt but there was implicit in what your Honor said when you advised this last juror for the benefit of all the jurors that the jurors' duty is merely to add up the figures, that the figures when added up might also result in an acquittal. There is no inevitability——

The Court: The figures when added up may result in a conviction or an acquittal.

Mr. E. H. Bloch: That is true.

A. I have a brother who was in the last war. I had a nephew in the Marines in the last war. I am a member of a church which is very much opposed to Communism. I work for a company that has handled a great many war contracts, and I am now working actively on so-called secret contracts for the Government.

Q. Do you feel despite that fact that you could not as a good citizen follow the instructions of the Court and determine this case based on the evidence and the evidence alone?

A. I feel so.

Q. How about you, Mr. Crawford (No. 12)?

A. Well, I had been investigated by the FBI, in 1943 before going to Oak Ridge, Tennessee, and while I was at Oak Ridge, I knew casually Frank Oppenheimer who is a [fol. 157] brother of Robert Oppenheimer, and I am presently employed by Allis-Chalmers, which is doing war work.

Q. Could you in this kind of case sit with an open mind and decide it upon the evidence?

A. I can.

Q. Mr. Sexton, you are assistant credit manager for Jacob Ruppert?

A. Yes.

Q. Married, are you?

A. Yes, I am.

Q. Does your wife work?

A. No, sir.

Q. Any children?

A. I have four children.

Q. Are they of school ages?

A. One is of school age; one is eight years old and another one is four and a half, two and a half, ten months.

Q. Very well. Mr. Meisner, I notice you are an engineer with the American Telephone & Telegraph?
A. Yes, sir.
Q. How long have you been with them?
A. Thirty-three years.
Q. Are you married?
A. Yes, sir.
Q. How long?
A. Since 1933.
Q. And your wife is at home, I take it?
A. She is. I have two sons.
Q. School age?
A. School age.
Q. Mr. Crawford, you are with Allis-Chalmers?
A. Yes.
Q. In what capacity?
A. I am a sales representative for them.
[fol. 158] Q. Are you married?
A. Yes.
Q. Does your wife work?
A. Yes.
Q. With whom?
A. B. Altman & Company.
The Court: Very well.

(Board containing names of jurors handed to Government counsel.)

Mr. Saypol: I will pass the round.
The Court: You have four challenges left, Mr. Saypol.
Mr. Saypol: I believe so. That is right.
The Court: And the defense has six challenges.
Mr. E. H. Bloch: I would like the Court to ask Juror No. 11, who in response to a question from the Court as to whether or not he has an open mind or is prejudiced—I forget the precise phraseology—replied "I believe so." I would like the Court to ask the juror whether he has an assuredness in his own mind and conscience that at this time——
The Court: Again I ask you, do you feel that you can

keep an open mind in this case and decide this case based on the evidence and the instructions from the Court?

Prospective Juror No. 11: To the best of my knowledge I believe I could.

(Board containing names of jurors handed to defense [fol. 159] counsel.)

Mr. E. H. Bloch: Will you bear with us for a moment, your Honor. (Consults with defendants Rosenberg.)

The defendants ask that 9, 11 and 12 be excused.

(Mr. Sexton, Mr. Meisner and Mr. Crawford excused by the defense.)

(Jacques de Callies, Samuel Begun, and James F. Tessitore, called as prospective jurors and take seats 9, 11 and 12 respectively.)

By the Court:

Gentlemen, have you heard everything that has transpired this morning?

(Prospective jurors nod in the affirmative.)

The Court: Is there anything anybody cares to volunteer?

Mr. Begun: Yes.

The Court: Mr. Begun.

Mr. Begun: Your Honor, I feel that because of my combat service in the United States Army during the last war, and because I personally have seen the effects of the atomic blast at Hiroshima, I think my mind would be prejudiced in this particular case.

The Court: Very well, you may be excused.

(Samuel Begun excused by the Court.)

(Mrs. Marilyn Peloso called as a prospective juror, takes seat No 11.)

[fol. 160] The Court: Is there something you want to say?

Mr. Tessitore (No. 12): Yes, your Honor. During the second World War we did a lot of Government printing. It is one of the largest houses in the country. We printed millions of topics for the Government.

By the Court:

Q. What is the name of your company?
A. Alco Gravure Division of Publications Corporation.
Q. Mr. Tessatore, despite that fact, do you feel you could keep an open mind and decide this case on the evidence?
A. I think I can.
Q. Mr. DeCallies?
A. Yes. I was a member of the Armed Forces during the last war, and I am biased against anyone of military age being deferred, and I think it would take a logical explanation for me to get over it.
Q. Well, wouldn't it be enough for you if they were deferred by the authorities?
A. What?
Q. Wouldn't it be enough for you if they were deferred by the authorities? Wouldn't you be ready to accept that?
A. Yes, if there was a logical reason.
Q. Aren't you willing to accept the judgment of the authorities who pass on it, or would you want to set yourself up as a judge on the matter?
A. Until I have seen some——

The Court: All right, we had better not enlarge on it. I [fol. 161] think we will have to let you go.

Q. Mrs. Peloso, have you heard everything that has transpired?
A. Yes.
Q. Do you feel that you can serve with propriety in this case?
A. Yes.

The Court: We will excuse Mr. deCallies.

(Mr. deCallies excused by the Court.)

(Louis H. Hertz was called as a prospective juror and took seat No. 9.)

By the Court:

Q. Mr. Hertz, have you heard everything that transpired?
A. I have, your honor.
Q. Do you feel that you could serve with propriety?

A. While I understand what you explained about the sentence, I am afraid that the fact that there was a potentiality of the death penalty in this case, it would affect me.

The Court: All right.

(Louis H. Hertz excused by the Court.)

(Wallace Plapinger called as a prospective juror and takes seat No. 9.)

By the Court:

Q. Mr. Plapinger, you heard everything that transpired?
A. Yes. I feel I could not serve where there was the [fol. 162] possibility of a death sentence.

(Wallace Plapinger excused by the Court.)

(Richard J. Rodd called as a prospective juror, takes seat No. 9.)

By the Court:

Q. Mr. Rodd, have you heard everything?
A. Yes, I have.
Q. Do you feel you could serve with propriety in this case?
A. I beg your pardon?
Q. Do you feel that you could serve with propriety in this case?
A. Yes, sir, I could.
Q. Is there anything you want to volunteer?
A. Yes, sir. I was in the Army. I am a member of the Reserve, and I was on a jury one time when Mr. Lane was attorney for the Government, and I was questioned by the FBI as to the character of one of my neighbors. I have a brother who is now in the Navy, sir.
Q. In this case that Mr. Lane tried, he didn't do anything there to ingratiate himself with you too much or dislike him too much?
A. No, sir. That is another case.
Q. You would try to take this case despite everything you told us and decide it on the evidence and the evidence alone?
A. Yes, sir.
Q. You are an art clerk employed by M. Knoedler & [fol. 163] Company?

A. Yes, sir.
Q. How long have you been with them?
A. About fourteen years, sir.
Q. Are you married?
A. Yes, sir.
Q. How long?
A. Six years.
Q. Does your wife work?
A. She starts today, sir. Pepsi Cola.
Q. For Pepsi Cola?
A. Yes.

Prospective Juror No. 12: Your Honor, I wish to say that during the war while we were doing this Government printing, the FBI came in and checked over all the employees of the company.

The Court: Very well.

By the Court:

Q. Now you have already told us, Mr. Tessitore, that you are with the Alco Gravure Division of Publications Corporation?
A. Yes.
Q. Married?
A. Yes.
Q. How long?
A. Fifteen years. I have three daughters going to parochial school.
Q. Does your wife work?
A. Yes.
Q. Mrs. Peloso, are you employed?
A. Yes, sir.
Q. By whom?
A. By Sears, Roebuck.
Q. What does your husband do?
A. Well, my husband was a pier guard, but he has an ul-
[fol. 163a] cerated leg. That is why I had to go to work.
Q. He is not employed at the present time?
A. No.

The Court: One challenge now to the Government.

[fol. 164] From here on in, gentlemen, both sides will exercise one challenge at a time. The Government has four

single challenges and the defense has three single challenges.

The Clerk: Mrs. Marilyn Peloso excused by the Government.

James Mitchell, No. 11.

(Mr. Mitchell, prospective Juror No. 11, took a seat in the jury box.)

By the Court:

Q. Mr. Mitchell, have you heard everything that has transpired?

A. Yes, your Honor.

Q. Do you feel you could serve with propriety in this case?

A. Yes, I think I could.

Q. Is there anything else you care to volunteer?

A. Well, I worked with the Post Office for a year and a half while I was going to school.

Q. What years did that cover?

A. The last half of '48 and all of 1949. During that time I was subject to the loyalty probe. I was a veteran of World War II and I spent a year of that service over in China, all of 1945.

Q. Are you married?

A. Yes, sir.

Q. How long have you been married?

A. I have been married for three years, sir.

[fol. 165] Q. Is your wife working?

A. No, sir; she is at home.

Q. Do you feel that despite everything that you have related here you could keep your mind open and decide this case on the evidence?

A. Yes, I do.

Q. I notice that you — an accountant with the firm of Harris, Kerr, Forster & Company; is that right?

A. That's right.

Q. Are you certified?

A. No, sir.

The Court: All right, you may be seated.

Mr. Mitchell: Also, sir, I have two children, the oldest is two years old.

The Court: All right.
Mr. E. H. Bloch: Defense asks that No. 9 be excused.
The Clerk: Richard J. Rodd excused by the defense.
Bernard Unger, No. 9.

(Mr. Unger, prospective Juror No. 9, took his seat in the jury box.)

By the Court:

Q. Mr. Unger, is there anything you want to reveal?
A. Yes.
Q. What is it?
A. I was born in Austria. It is now occupied by the Russians.
Q. Anything else?
A. No.
[fol. 166] Q. Well, now, can you, despite that fact, keep your mind open?
A. No.
Q. You cannot?
A. No.

The Court: You may be excused.
The Clerk: Mr. Unger excused by the Court.
John E. Richardson, No. 9.

(Mr. Richardson, prospective Juror No. 9, took his seat in the jury box.)

By the Court:

Q. Mr. Richardson, is there anything you want to relate?
A. Yes, sir; my father has been employed by the Postal Department for 32 years. I was a veteran of the last World War. My mother-in-law was born in Russia, but she came to this country in 1914, and my father-in-law was born in Hungary; he came to this country in 1914. I believe that is all.
Q. Despite all of these facts that you have related, do you feel that you could decide this case based upon the evidence?
A. Yes, sir.
Q. I notice that you are a musician?
A. Yes, sir.

Q. With the Bobby Byrne orchestra?
A. Yes, sir.
Q. You are still with them, are you?
A. Yes, sir.
Q. Are you married?
A. Yes, sir; I am.
Q. How long have you been married?
A. One and a half years.
[fol. 167] Q. Does your wife work?
A. Yes, she does.
Q. Where does she work?
A. She works for her father. He is a designer and makes emblems for sporting goods.
Q. What is his name?
A. Alex Dorvel.

The Court: All right.
The Clerk: John E. Richardson excused by the Government.
Bernard H. Sakin, No. 9.
The Court: Gentlemen, you each have two challenges.

(Mr. Sakin, prospective Juror No. 9, took his seat in the jury box.)

By the Court:

Q. Mr. Sakin, have you heard everything that has transpired today?
A. I have, your Honor.
Q. Do you feel you could serve with propriety in this case?
A. No, I don't your Honor. I feel I would be biased in this case.
The Court: I will accept that as an honest statement, Mr. Sakin.
Mr. Sakin: It is an honest statement.
The Clerk: Mr. Sakin excused by the Court.
Valentine P. Rader, No 9.

(Mr. Rader, prospective juror No. 9, took his seat in the [fol. 168] jury box.)

By the Court:

Q. Mr. Rader, is there anything you want to tell the Court?

A. Yes, there are several points that you brought up. I am acquainted with two FBI Men, but of a casual nature. I have attended C. C. N. Y. while I was an Navy officer candidate during the last war, but just for a short time. My father has been on the Grand Jury, but I don't know whether he has been associated with the present indictments.

Q. He has never discussed it with you, at any rate?

A. No, he has not.

Q. As far as you know, when did he serve on the Grand Jury last?

A. I believe it was in the fall of last year.

Q. Of 1950?

A. That's right. I have two relatives who have been in military service, but are not at the present time and I am a former employee of Bell Labs during the war, but I am no longer connected with them.

Q. Well now, your relationship with these FBI agents, you said, was casual?

A. That's right.

Q. I take it, therefore, there has never been any discussion with them concerning their work?

A. That is correct.

[fol. 169] Q. Now, your father, you say, has not discussed his work with you at all?

A. That is correct.

Q. Taking all of these matters that you have just related, do you feel that you could keep your mind open here and decide this case based on the evidence?

A. I do, sir.

Q. I notice you are an engineer with the American Gas & Electric Company?

A. That's right.

Q. How long have you been with them?

A. I have been with the American Gas for 15 years, with the exception of the two years' leave of absence that I had for working with Bell Labs.

Q. Are you married?

A. I am.

Q. How long?
A. 13 years.
Q. Is your wife at home?
A. No, she is employed.
Q. By whom?
A. Federal Home Loan Bank of New York.
Q. Is that a subsidiary of the Government?
A. I believe it was at one time, but it is not, now, to the best of my knowledge.
Q. Well, if it proves to be or it was, would that in any way embarrass you from sitting on this jury?
A. No, sir.

The Court: Very well.
Mr. E. H. Bloch: May I come up to the bench for one moment, your Honor?
[fol. 170] The Court: Yes.

(The following took place at the bench, outside the hearing of the Jurors:)

Mr. E. H. Bloch: In connection with this last juror, his father, he said, was a member of the Grand Jury. I was wondering whether that was the Grand Jury that indicted these defendants?
Mr. Saypol: It couldn't be, because that Grand Jury is still in session.
Mr. Lane: The August Grand Jury who was the one returned the indictments.
The Court: He said it was last fall.
Mr. Saypol: He said it was the same jury.
Mr. E. H. Bloch: They were superseding indictments.
Mr. Saypol: Same Grand Jury.
Mr. E. H. Bloch: I mean, I take your assurance that he was not on it.
Mr. Lane: We don't know the names.
Mr. E. H. Bloch: That is why I came up to the bench. I think it is extremely relevant.
Mr. Saypol: Why don't you ask him what his name is? He said it was his grandfather.
Mr. E. H. Bloch: No, his father.
Mr. Saypol: There is no Rader on that panel.
[fol. 171] Mr. Lane: We will check.

Mr. Saypol: Subject to check, I say he is not on the panel. Let's ask him whether he is still serving. If not——

The Court: Mr. Rader, is your father still serving on the Grand Jury?

Mr. Rader: He is not active at present, but he is still subject to call.

Mr. Saypol: He is still subject to call. I don't know what that means.

The Court: That means the Grand Jury hasn't been disbanded; that is what it means.

Mr. Saypol: We will check that immediately. Take the statement for the record that I believe he is not on the panel that returned this indictment or any of the superseding indictments.

The Court: All right.

Will he come right back?

Mr. Saypol: It will only take about two minutes.

The Court: I wonder if he understood we are holding up the proceedings until he got back?

Mr. Saypol: That inquiry might be made by telephone directly to Mr. Connell. He probably could give him the answer immediately.

The Court: Why don't you do that?

[fol. 172] Mr. Saypol: He can pull the card right from his files.

The Court: Was it the August Grand Jury?

Mr. Saypol: Yes.

By the Court:

Q. What is your father's full name?

A. Martin F. V. Rader.

Q. Do you know when your father served?

A. I do not know the date, no.

Q. You say your father had served this fall?

A. I thought he had, yes, sir.

Mr. Cohn: It may have been the State Grand Jury.

Q. Are you sure he served in the Federal Grand Jury?

A. It was my understanding that it was the Federal Grand Jury.

The Court: Well, at least it is indicative of the fact that he and his father weren't on speaking terms.

Mr. E. H. Bloch: I don't want to pass judgment on that. I was wondering, in view of the arguability of the relationship, whether the prosecution might consent——

The Court: Whether they might what?

Mr. E. H. Bloch: Might consent in the defense request that this juror be excused?

Mr. Saypol: What is the contention that is made?

Mr. E. H. Bloch: Well, the contention is this: There seems [fol. 173] to be some question of whether or not his father sat on a Grand Jury. Even though the records disclose that his father sat until May, the juror states that it is his belief that his father did sit on a Grand Jury.

The Court: Well, I would say, even assuming that his father did, that wouldn't be an automatic disqualification, particularly where the juror discloses, as he does here, such a complete lack of knowledge of what his father does.

Mr. Saypol: I would go further and say that that perhaps would qualify him more to serve.

The Court: I think it would indicate a refreshing frankness on the juror's part and I can't see that that should be a disqualification for cause. Of course, it is up to the Government, if they want to consent.

Mr. Saypol: We would not. I shouldn't put a stigma on any juror that way.

Mr. E. H. Bloch: I am not trying to put a stigma on any juror. I am trying to test the impartiality of the juror. If there is any reasonable doubt in any of our minds, I thought that he had come to the conclusion——

Mr. Saypol: There isn't any basis or hint of a doubt. [fol. 174] Mr. E. H. Bloch: Well, except that out of a population of seven million, it is very coincidental that a father and a son should be sitting respectively on a Grand Jury and a Petit Jury within a few months, and where there might be a chance that the father did sit on the Grand Jury which indicted these defendants.

The Court: I think you are building something that doesn't exist here.

Mr. E. H. Bloch: It may be.

The Court: As I said, even if he did, I am satisfied that

this juror is showing such complete frankness and honesty concerning the matter that I wouldn't find that there had been any cause to disqualify him, although I might, in my discretion, if it appeared that it was, just to make everybody happy, excuse him.

Mr. E. H. Bloch: That is what I thought we could do.

The Court: But aside from that, I don't see any purpose of further discussion, and, as I understand it, Mr. Saypol, you are willing to stipulate, aren't you, that your——

Mr. Saypol: Indeed I am not, if the Court please.

The Court: No. You are willing to stipulate that his father was not on this Grand Jury.

Mr. Saypol: I will state that as a fact. I certainly should [fol. 175] not want one, who served on the Grand Jury that filed this indictment, to be related to the case, but on the other hand, as emphatically as I can, I shall not do anything to stigmatize the relationship.

Mr. E. H. Bloch: I not only did not want to stigmatize the relationship, I wanted to honor the relationship of son and father there by showing there might be an esprit de corps of the closest kind.

The Court: Apparently there isn't any esprit de corps, because he doesn't know what his father has been doing of late.

Mr. E. H. Bloch: Defense asks that Juror No. 9 be excused.

The Clerk: Mr. Rader excused by the defense.

Louis Boxer, No. 9.

(Mr. Boxer, prospective Juror No. 9, took his seat in the jury box.)

By the Court:

Q. Mr. Boxer, have you heard everything that has transpired?

A. I have, your Honor.

Q. Is there anything you care to volunteer to the Court?

A. Yes, sir. I would like to say that I am opposed to capital punishment.

The Court: All right, excused.

The Clerk: Mr. Boxer excused by the Court.

[fol. 176] The Court: His father was not on that Grand Jury.

Mr. Lane: That's right.

The Court: All right.

The Clerk: Mrs. Lisette D. Dammas, No. 9.

(Mrs. Dammas, Prospective juror No. 9, took her seat in the jury box.)

By the Court:

Q. Mrs. Dammas, have you heard everything that has transpired?

A. I have, your Honor.

Q. Is there anything you care to volunteer to the Court?

A. That my son-in-law is in the National Guard, that is all, and I have served on the Grand Jury, that is all.

Q. How yong ago?

A. Bronx County.

Q. Bronx County Grand Jury?

A. Bronx County, in May, 1950.

Q. By reason of either of those facts——

A. It wouldn't have anything to do with it, as far as I am concerned. I will listen to the evidence.

Q. Mrs. Dammas, you were a switchboard operator, is that right?

A. Yes.

Q. And your husband is a dispatcher for the I.R.T.?

A. That's right.

Q. Did you say your son is in the National Guard?

[fol. 177] A. That's right.

The Court: Very well.

The Clerk: Walter J. Brown excused by the Government.

Charles J. Duda, No. 10.

The Court: Last challenge coming up for the defense; last challenge coming up for the Government.

(Mr. Duda, prospective Juror No. 10, took his seat in the jury box.)

By the Court:

Q. Mr. Duda, have you heard everything that has transpired in this case?

A. I have.

Q. Is there anything you care to volunteer?

A. My grandparents were born in Czechoslovakia and one relative of mine served in the United States Navy in the last war.

Q. Would either of these facts that you have just related, in any way interfere with your keeping an open mind in this case?

A. No, sir; they would not.

Q. You are a bookkeeper, I notice, with Davis & Lawrence Company?

A. That's right.

Q. Are you married?

A. Yes, I am.

Q. How long have you been married?

A. Seven years.

Q. Does your wife work?

A. No, she does not.

The Court: Very well.

[fol. 178] Mr. E. H. Bloch: Would you ask the juror whether he has any children?

The Court: Have you any children?

Mr. Duda: One, three years old.

The Court: Very well.

Mr. A. Bloch: Defendants pass.

The Court: You waive your last challenge?

Mr. A. Bloch: That is correct.

Mr. Saypol: Challenges waived and the jury is satisfactory to the Government.

The Court: Very well.

Mr. Kuntz: Satisfactory to the defendant.

The Court: Jury satisfactory all around.

Mr. E. H. Bloch: Satisfactory all around.

(Jurors sworn in by clerk.)

The Court: Madam and gentlemen, you have been selected as jurors in this case. My bailiff will escort you when we take our recess for lunch, to the jury room, which is behind the courtroom, here, where you will leave your hats and coats. You will in the mornings, go to that jury room, leave your hat and coat there and wait until you are sent

for; the same thing during your luncheon recess. When we return this afternoon, we will pick four alternate jurors.

I will ask everybody in the panel to return here at 2.20 [fol. 179] today, the jury at 2.20 today. I am quite a fuss budget about being prompt. I try awfully hard to be prompt myself and I would appreciate if everybody concerned with this case will be prompt.

I will tell you something about the hours which we will keep during the course of this trial this afternoon, and, of course, I admonish you now and I ask you to carry it with you at all times throughout this trial, not to discuss it with your fellow jurors, not to discuss it with anybody at home, not to discuss it with anybody, not to permit anybody to discuss the case with you, and, of course, not to read a newspaper, read anything in a newspaper concerning this case, not to listen to the radio, not to watch television, at no time to read any magazine that deals with this particular case.

We will now recess until 2.20.

(Recess to 2.20 P. M.)

[fol. 180] Afternoon Session

(Miss Adele Dugger called as a prospective alternate juror.)

Mr. Saypol: Will the Court suffer an interruption? I think the record is barren as to any indication by the Court on the number of alternates.

The Court: I did say this morning there would be four alternates.

Mr. Saypol: Has your Honor made a direction with respect to challenges?

The Court: Well, that is according to the rules, two challenges to each side.

Mr. E. H. Bloch: Two on each side?

The Court: Yes.

(Emerson C. Nein, Richard Lombardi and Mrs. Edna Allen, called as prospective alternate jurors.)

The Court: Now I assume the alternate jurors have heard everything that has transpired in this case so far. If you haven't, will you please speak up. Is there anything that any of you would like to volunteer to the Court?

Mrs. Allen: I have a son in the Army, in the Chemical Corps.

By the Court:

Q. Presently in the Chemical Corps?
A. Yes.
[fol. 181] Q. Would that fact in any way prejudice you in this case?
A. No.
Q. Do you feel you can keep your mind open?
A. Yes. And my parents were born in Austria.
Q. Your parents were born in Austria?
A. Yes.
Mr. Nein: I had one year in the service in 1928. The bank in which I was employed was a codefendant in an antitrust suit. Subsequently the complaint was dismissed.
Q. What bank was that?
A. The Empire State Bank.
Q. As a result of any of these factors that you have related, do you feel that you might be prejudiced in this case?
A. No.

Mr. Lombardi: I am a Government employee and ex-service man. My son is a veteran of the last war.

Q. What branch of the Government?
A. Post Office.
Q. Do you feel it would be embarrasing for you to serve in this case by reason of that employment?
A. No.
Q. Do you feel by reason of anything you have stated here that you might be prejudiced and could not keep your mind open?
A. No, sir.
Q. All right. Miss Dugger, you are a secretary, are you?
A. Yes.
Q. With the Benjamin Adler Corporation?
A. Yes, the Adler Trading Corporation.
[fol. 182] Q. What is their business?
A. Well, it has just recently been a corporation; it is now Benjamin Adler Cotton.
Q. What business?

A. In the cotton business.
Q. Cotton converters, are they?
A. No; through the Cotton Exchange.
Q. Are you married?
A. No.
Q. Mr. Nein, you are assistant auditor in the Empire City Savings Bank?
A. I am an auditor.
Q. Are you married?
A. I am.
Q. How long?
A. 20 years. I have a son 18 and a daughter 19.
Q. What do your children do?
A. My daughter is employed by a patent attorney, secretary. My son is presently unemployed.
Q. Mr. Lombardi, are you married?
A. Yes, sir.
Q. How long?
A. 27 years.
Q. Any children?
A. Two, 26 and 24. Both married. A son and a daughter.
Q. What does your son do?
A. He is a radio announcer in New Hampshire.
Q. And your daughter?
A. She is just out of school.
Q. What does her husband do?
A. Oh, he is a bank teller.
[fol. 183] Q. Mrs. Allen, are you a housewife?
A. Yes.
Q. And your husband is a sheet metal worker?
A. Yes. He works for Consolidated Edison.
Q. Any children?
A. Yes. Four.
Q. Four? What are their ages?
A. My son is in the Service. My daughter is 18. Another daughter 14, another one 9.
Q. Miss Dugger, Mr. Adler had some litigation in this court recently, didn't he?
A. Yes, he did have one. I don't know what it was. I haven't been very long in it.
Q. It was a civil litigation?
A. It was a civil case, yes.

Q. You don't know anything about the details?
A. No. I didn't even know who it was or anything except that it was in this court.

Mr. E. H. Bloch: Can we assume we are to exercise our challenges singly?
The Court: Singly.

Mr. E. H. Bloch: We pass.
The Court: You waive this one.
The Clerk: Miss Adele Dugger excused by the Government.
Adolph W. Barr, alternate No. 1.

[fol. 184] (Mr. Barr, prospective alternate Juror No. 1, took his seat in the jury box.)

By the Court:

Q. Mr. Barr, I assume you have heard everything that has transpired in this case so far?
A. Yes.
Q. Is there anything you care to volunteer to the Court?
A. My daughter was with the Manhattan Project, under Dr. Urey. I think I would be biased.
Q. You do think you would be biased?
A. Yes.

The Court: You may be excused.
The Clerk: Mr. Barr excused by the Court.
Leon J. Cambern, Alternate No. 1.

(Mr. Cambern, prospective alternate Juror No. 1, took his seat in the jury box.)

By the Court:

Q. Mr. Cambern, is there anything you care to state to the Court?
A. I have heard everything, your Honor. This is embarrassing, because I have a deep sense of obligation; I would like to serve on this case, but there will be evidence and testimony presented, which I would not, under any circumstances, accept.

The Court: Very well.

The Clerk: Mr. Cambern excused by the Court.
William Barnett, alternate No. 1.

(Mr. Barnett, prospective alternate Juror No. 1, took his [fol. 185] seat in the jury box.)

By the Court:

Q. Mr. Barnett, is there anything you care to state?
A. Sir, I am a member of the State Guard and I am opposed to capital punishment.
Q. Even though you have nothing to do with imposing it?
A. No, sir.

The Court: Excused.
The Clerk: Mr. Barnett excused by the Court.
John F. Moore, alternate No. 1.

(Mr. Moore, prospective alternate Juror No. 1, took his seat in the jury box.)

By the Court:

Q. Mr. Moore, do you feel you could serve with propriety in this case?
A. I do, sir.
Q. Is there anything you care to state?
A. Yes, sir; I am a veteran of World War I, served in the United States Army. I have a friend that is a policeman, a casual acquaintance.
Q. Casual acquaintance?
A. Yes, sir.
Q. Has anything happened in your relationship with your policeman friend that would cause you to be prejudiced against either of the sides here in this litigation?
A. No, sir.
Q. You feel that you could hold your mind open and [fol. 186] decide this case, if called upon to do so, based on the evidence?
A. Yes, I do.
Q. You are a business representative for the Consolidated Edison Company; is that right?
A. That's right.
Q. Are you married?

A. Yes, sir; two children, one and three years of age; wife at home.

The Court: Very well.

Mr. E. H. Bloch: Would your Honor kindly ask Mr. Moore for whom this casual friend of his is a policeman?

Mr. Moore: City of New York, sir.

Mr. E. H. Bloch: And may we also find out how long Mr. Moore knows this policeman?

By the Court:

Q. How long do you know this policeman?

A. About 18 years, sir, in which time he hasn't been a policeman all that length of time.

Q. How long has he been a policeman?

A. About seven years.

Q. Does he ever discuss his police work with you?

A. No, sir, he does not.

Alternate Juror No. 2: Your Honor, I don't know if it is material or not, but I am an officer of the bank.

The Court: You are an officer of your bank?

Alternate Juror No. 2: That's right.

[fol. 187] The Court: All right.

Mr. E. H. Bloch: Defense waives.

Mr. Saypol: Government likewise waives and the jury is satisfactory.

Mr. Kuntz: Satisfactory.

(Alternate jurors sworn by the clerk.)

The Court: Well now, will the alternate jurors please follow the bailiff here, who will help you put your coats away and you will return to the courtroom.

The Clerk: Will the remaining jurors please return to Room 109?

COLLOQUY BETWEEN COURT AND COUNSEL.

The Court: May I see counsel, please, at the bench.

(The following discussion took place at the bench, outside the hearing of the jury:)

The Court: I want to talk to counsel about openings. Will you keep your openings brief? I don't think much is accomplished anyway by openings.

Mr. A. Bloch: I intend to take about three minutes, perhaps five.

The Court: How about you?

Mr. E. H. Bloch: Not very much.

Mr. Kuntz: I will take very few minutes.

Mr. Saypol: I will take about 12 minutes.

Mr. A. Bloch: I was wondering if I could make a sugges-[fol. 188] tion in order to avoid repetition and duplication? Can't it be understood that any objection made either by my son or me, or any exception taken by him or by me, or any motion by him or by me, should be taken as if I had made it, or as if he had made it.

The Court: It will be so considered.

Mr. Phillips: In order to avoid usual repetition——

The Court: You want their objection to inure to your benefit?

Mr. Phillips: As well.

The Court: Well now, I will permit that in the absence of any statement from you to the contrary. In other words, if you don't want some objection they have taken for some reason not be used for your benefit, why, you will so state and I will permit it.

Mr. Phillips: Of course.

The Court: All right.

Mr. Saypol: Does your Honor intend to hear motions?

The Court: I might say this on the matter of motions: I would make that very brief, too. I have read your briefs, and while I think you have done a splendid job in your briefs, I really don't agree with you, and so I don't think you need labor the point in your argument, but if you want [fol. 189] to argue it, you can argue; if you want to make it pro forma, you can make it pro forma.

Mr. E. H. Bloch: I hope your Honor will bear with me. It is on the first point that I want to elaborate, and at the present time I know that the Court hasn't foreclosed its mind. I want to try to be persuasive.

The Court: I will let you argue, but I have read the cases and my feeling in the matter is, it was inherent in the Goren decision, it was not violative of free speech, and so forth.

Mr. E. H. Bloch: I understand. That is why I wanted to talk about that point.

Mr. Saypol: May I join in your Honor's observation?

The Court: So you won't be too elaborate on it.

Mr. E. H. Bloch: I will try not to.

Mr. Saypol: After we get through with these motions, will you give us a five-minute recess?

The Court: (To the jury) We have got some legal matters that have to be argued before the Court, so I will excuse the jury for the time being. They will please follow the bailiff and we will send for you when we need you.

[fol. 190] Mr. A. Bloch: May I step up to the bench for a moment?

(The following proceedings took place at the bench outside the hearing of the jury:)

Mr. A. Bloch: I would like to be excused while my son is arguing the motion.

The Court: All right, if it is all right with your client, it is all right with me.

The Court: May we understand, Mr. Bloch, if that occurs from time to time, that your son will always take over in your place?

Mr. A. Bloch: That's right; I wanted to emphasize that.

The Court: Very well.

All right, I will entertain motions now addressed to the indictment.

Motion to Dismiss Indictment as to Rosenbergs

Mr. E. H. Bloch: If the Court please, on behalf of the defendants, Julius Rosenberg and Ethel Rosenberg, I am making this motion to dismiss the indictment upon three broad grounds, the first two of which involve constitutional objections and the last or third, involve defect in pleading.

As to the first two points which relate to constitutional arguments, before formulating them for the record, I would like to say that there is no dispute here—of course I [fol. 191] wouldn't care to dispute the obvious—that Congress has both the competence and the power to legislate on the subject of espionage. I think that would be so axiomatic as not to call for any remarks whatsoever. However, in connection with the exercise of that right and power

to legislate on the subject, I think that any legislation must be viewed, balanced and counterposed against the great fundamental rights embodied in our Bill of Rights, and particularly the rights guaranteed by the First Amendment; and I think the law is settled that where legislation, that would otherwise be proper in legislating on any particular subject, runs counter to or infringes upon rights guaranteed by the First Amendment, the statute must fall.

Now, it is the contention of the defendants that the statute upon which this indictment is based, namely, Section 974 of Title 18 of the United States Code, which is really combined former Sections 32 and 34 of former Title 50, is a bad statute, is a void statute, because in the first place, on its face it violates the First Amendment to the Constitution of the United States, for failure to establish sufficiently definite and certain findings of guilt; and in the second place, that the statute on its face violates the fifth—at least the due process clause of the fifth—and that part [fol. 192] of the section which entitles a defendant to a fair statement of the charge against him upon the grounds for failure to establish sufficiently definite and certain findings of guilt; and I would like to take the time which the Court is allotting to me to dwell upon and elaborate a little bit on the first point, particularly with reference to dissipating from the mind of the Court as well as from the minds of many people, the facile assumption that the Goren cases precludes a consideration of the approach and the arguments and position here taken.

I say to the Court that never before has this statute been tested or challenged upon the grounds that it violates the First Amendment, and I say to the Court—and I think I will be able to persuade the Court—that the Goren case—and I am not citing the cases because the Court has my brief; I think almost every lawyer has read the Goren case—the Goren case involved a situation in which this statute was construed, but where neither the appellant nor the Government ever raised a question of the impingement of the rights under the First Amendment. I have not only read the opinion, I have read the briefs submitted by the Government and by the appellant, and all that the Court did in that case was to validate the statute upon the ground

[fol. 193] that it did not transgress the due process clause under the Fifth Amendment.

Now, I say that this question has never been raised and it was not implicit in the decision in the Goren case, because under well established practice of the courts, courts will not sua sponte strike down a statute as unconstitutional unless the precise questions pertaining to the alleged unconstitutionality are set forth and raised before the Court.

In the Goren case the appellant conceded by not raising that the statute did not violate the rights of freedom of speech or press or the related rights under the First Amendment.

[fol. 194] And I think that that statement that I just made with respect to the Gorin case is applicable to the Heine case decided by this Circuit about six years ago and which followed by about five years the decision of the Supreme Court in the Gorin case. I say to the Court that when a statute is challenged upon the ground that it comes within the condemnation of the decisions forbidding infringement, impingement, impairment or destruction of rights under the first Amendment, that the questions presented to the Court take on an entirely different aspect, because when a statute is so presented as violative of the First Amendment it comes without the presumption of constitutionality; when it is merely challenged on some other constitutional ground it comes within the presumption of constitutionality.

To put it another way, the presumption of constitutionality is reversed when First Amendment rights are claimed to have been violated.

Now why do I say that First Amendment rights have been violated? The Court has my brief and I don't want to repeat or be repetitious or duplicate what I have already said except by way of emphasis. It is quite evident that the key words in this statute are the words relating to the national defense. The statute makes it a crime for anybody with intent or reason to believe that it may be used to the [fol. 195] advantage of a foreign power I am going to leave out "to the injury of the United States" here because this indictment merely alleges to the advantage of a foreign power any document or sketches or notes or memoranda or any information relating to the national defense.

Now the words "national defense" have absolutely no

definition that can be found, at least not found by me in my research, in any lay dictionary or in any legal dictionary, and the words "national defense" were unknown in common law. And they are not those words of art which are usually used in statutes, and which aim at prohibiting conduct on the part of a special group or class, with a particular technical advancement or knowledge so that the words would have a specific connotation, and that incidentally distinguishes a number of the cases where statutes have been held, not vague and not uncertain where directed against people in a certain vocational business who understand through the trade and through usage and technical habits the meaning of certain words. We find that in the words "national defense", and as the courts, I believe, have impliedly acknowledged, national defense is really a social and a political concept.

Now, one may say that concepts may be the subject of litigation, but I say that when social and political concepts [fol. 196] are changeable, are not static, but vary from day to day and year to year, and expand according to the vicissitudes of history or the unpredictable changes in the field of international relations, that you have something which is very elusive, and which in my estimation is so equivocal as not to come within the well-recognized rule that statutes should prescribe with sufficient definiteness precisely what they mean, what mischief they seek to avoid, and what an actor may be warned against in his conduct in the transgression of the statute.

The Court: I don't see what that argument, that the United States Supreme Court ——

Mr. E. H. Bloch: I am coming to that.

The Court: Just listen to me a moment.

Mr. E. H. Bloch: Yes.

The Court: Gorin v. the United States dealt with the same question as to the interpretation of the words "national defense".

Mr. E. H. Bloch: That is correct.

The Court: And they said ——

Mr. E. H. Bloch: It is on page 8 of the brief.

The Court: Page 28 of the case.

Mr. E. H. Bloch: All right.

The Court: "Finally we are of the view that the use of

the words has given them, as here employed, a well under-[fol. 197] stood connotation. They were used in the Defense Secrets Act, the Act of 1911. The traditional concept of war as a struggle between nations is not changed by the intensity of support given to the Armed Forces by civilians or the extension of combat area. National defense the Government maintains, is a generic concept of broad connotation referring to the military and naval establishments and the related activities of national preparedness. We agree that the words "national defense" in the Espionage Act carry that meaning."

There is an adjudication by the United States Supreme Court on the subject.

Mr. E. H. Bloch: And as you know, your Honor, I have quoted at least part of what your Honor has just read in my brief.

The Court: But you are in effect saying that despite the fact that the United States Supreme Court has dealt with the interpretation of the words "national defense" and found them to be words of certainty and definiteness that I should nevertheless say that the statute today is so vague that it is violative of not only the Fifth and Sixth Amendments, but the First as well. Is that not in effect your argument?

Mr. E. H. Bloch: May I paraphrase? Will you give me the liberty of paraphrasing what the Court has said, and [fol. 198] what my position is?

The Court: Go ahead.

Mr. E. H. Bloch: I am saying to the Court, as I said at the beginning of my argument, that when you begin to test a statute where it is alleged that it contravenes rights under the First Amendment, you must view it much more strictly in favor of the person challenging it than if the challenge were merely made under the Fifth and Sixth.

Now, of course, the Supreme Court has said that "national defense" in the Gorin case, is a generic concept or broad connotation referring to the military and naval establishments and the related activities of national preparedness. I would like to take that definition, of course. That definition is binding upon the Court; it is binding upon me; and binding upon every lawyer; it is binding upon every citizen;

but let us analyze it and let us think through what this means, whether this has made the words "national defense" that kind of a definite and certain term as not to come within the condemnation of the First Amendment argument that I have just made. Now the fact remains that only five years later, Judge Learned Hand, the presiding judge in this Circuit, had this very same statute, and he also was very much concerned with what "national defense" meant and [fol. 199] here is what he said "national defense" meant. —He said a literal meaning of "national defense" involves, and I am quoting——

The Court: I know. I have read the case.

Mr. E. H. Bloch: "Every part, in short, of the national economy and everything tending to disclose the national mind are important in time of war, and will then 'relate to the national defense' ". Then he goes on to enumerate——

The Court: I have read it.

Mr. E. H. Bloch: —the particular fields of activity which can be swept within the purview——

The Court: But in doing——

Mr. E. H. Bloch: —of this statute.

The Court: But in doing so he was limited, wasn't he, further?

Mr. E. H. Bloch: I am going to come to that, to the judicial limitation point. What I am saying to the Court now is a literal reading of this statute makes it void on its face because it is so broad. As the Supreme Court said, a concept of broad connotation. It is so broad as to encompass every part of the economy. Let me ask you this question, your Honor.

The Court: Yes, but——

Mr. E. H. Bloch: Just envisage this situation: Let us assume that some agency of Government under this statute, [fol. 200] and as we come to that you will see that it will be the military, labels every aspect of national life as secret and confidential; would you say that it is your concept that this statute was enacted and envisaged to give the military such power as to impose a military dictatorship in this country? Now that is precisely what must be the logic of the position of anybody who says that "national defense" as defined by the Gorin case, is the definition which must be binding upon the citizenry of this country.

Now, in my estimatton, your Honor, I don't think Congress intended any such thing. I don't think you believe that it intended any such thing. But yet, what will prevent a court, if it is going to give a literal adherance to the definition in the Gorin case, from saying—"Well now, this is a concept of broad connotation and if the military says this is secret and this is confidential, then that can be proscribed activity and conduct".

The Court: That is not the problem at this point, as I see it, because we are not dealing with the kind of case such as you point out.

Mr. E. H. Bloch: That is correct.

The Court: We have a case here where no such question apparently is even being raised as to whether or not the military had a right to declare what the Government claims [fol. 201] secret information should have been secret. So that I don't think we ought to deal with that at all in that hypothetical case.

I would suggest this; I have your point. I have your point well in hand. I understand your point very well. I think you ought to wind up your argument unless there is something else, some other point you want to get across, and I will then rule.

Mr. E. H. Bloch: All right. Now then, your Honor, let me say this, merely because that is a reductio ad absurdum illustration to prove my point——

The Court: I understand.

Mr. E. H. Bloch: —as pointedly as I could make it. I merely say to you on the fact of the statute, even Judge Hand has used the following expression, "A drastic repression of the free exchange of information". I have to take this statute on its face and I am addressing my motion here to the Court with respect to the statute on its face.

The Court: Did I understand correctly that your co-counsel in arguing before the Court of Appeals this week on a writ of habeas corpus for the defendant Sobell raised this question of constitutionality? And did I not understand that Judge Frank had said that it was inherent in the Heine case, this case you are talking about——

[fol. 202] Mr. E. H. Bloch: May I answer that?

The Court: Just let me finish.

Mr. E. H. Bloch: I am sorry.

The Court: (Continuing)—which Judge Learned Hand had written, that the Court had ruled upon the question of constitutionality. It was apparent, he said, as I understand it——

Mr. E. H. Bloch: May I say this to the Court in answer to that incident? I can't say categorically that that was so. It would be pure he-resay on my part. I wasn't present, but I am going to take the Court's understanding of what occurred there because from hearsay I think that is about what happened.

Now I don't know whether Mr. Phillips who presented this argument had a chance to elaborate. I got the impression that it was a rather summary disposition of this question. All I would like to say to the Court, if the Court will give me a chance to elaborate just a little bit.

[fol. 203] The Court: I would rather——

Mr. E. H. Bloch: I would have answered Judge Frank as follows: that there is nothing in the Heine case, in the printed words of the decision or in the brief of either the appellant or the appellees which raised the constitutional point. On the contrary, that case went up solely on the question of whether or not the evidence was sufficient to convince the defendant, and it merely went to the quantum of the evidence, for certainly no constitutional questions were involved, and I say that by no stretch of the imagination can we say that there was impliedly put into that decision a ruling on the constitutionality. Certainly if the appellees didn't raise it I can't see how it can be said that it was raised, and moreover if the court wanted to talk about constitutionality and make itself clear, it would have said so. No at all. Judge Hand felt, and I think with great realism, that there was something wrong with this statute and he tried, he tried to apply it or define it so that it might come within that area upon which there would be no constitutional attack. But in doing so, your Honor, and this is also true of the rationale in the Gorin decision, not only the rationale but the actual statement of the Court—what the Supreme Court did in the Gorin case and what the Circuit Court of Appeals did in the Heine case was to dele-

[fol. 204] gate to the military the authority to control communication of information and of ideas and put a fetter upon

any cultural intercourse, any political intercourse, any social communication, and I say that Judge Hand was absolutely right when he said a drastic repression of the interchange of ideas, but in trying to mold the statute into an area where it could be held proper, maybe the courts didn't think it true, but I am impressing upon the Court now that it is true, that they themselves exceeded their power in delegating power to the military. That is uncalled for on the basis of the statute. There is nothing in the statute that talks about a declaration by a court of secret, not secret, confidential, or not confidential information. By doing that in the first place, they did something which they were not authorized to do, and the courts have recognized that at times when they have in the constitutional field exceeded their powers. They did it in Erie v. Tompkins, where they reversed the Swift v. Tyson case after the Swift v. Tyson case had been the law for eighty years. It had not been pressed upon them and that is what I am doing now.

The Court: It may still be that if you eventually take this case up to the United States Supreme Court maybe they will change their minds.

[fol. 205] Mr. E. H. Bloch: Well, I understand that. Your Honor in a sense, sitting as a District Judge, is circumscribed and would hesitate——

The Court: That is correct.

Mr. E. H. Bloch: Would hesitate a lot before you would say about this statute that it is unconstitutional. However, I am saying to the Court that after some research and some thinking on the subject I am reasonably convinced that this is a sound argument; otherwise I would not press it upon the Court and I would not want to put the Court in a position where it is reluctant and would be forced to be express in some manner shape or form.

I would like to make one further point.

The Court: Make it very brief, please.

Mr. E. H. Bloch: I will. Just one further point.

The Court: We want to actually get to the testimony today.

Mr. E. H. Bloch: I am going to be through in just about two or three minutes, your Honor. Not only did they delegate without warrant and unconstitutionally powers to the military to control communications protected by the First

Amendment, but they bound themselves by the very definition that they put upon the words, *they bound themselves* [fol. 206] *by the very definition that they put upon the words,* they bound themselves by the military decision, so that no matter what the military may do, if the Gorin and Heine cases are to be read with a certain amount of common sense and logic and implication, the courts would be forced to yield to that ruling or regulation or exercise of power by the military, and I say this——

The Court: Are you serious in that argument?

Mr. E. H. Bloch: I am.

The Court: Do you think if your argument is carried to a ridiculous end, that no matter what the military ever do, and they declare everything secret, as a matter of fact you are not even supposed to go home and talk to your wife about anything, you are not supposed to answer how she is feeling, you would say that if they did that——

Mr. E. H. Bloch: That is the logic of the decision. I will say this, I have enough confidence in the Court to know that when they come to a situation like that, they begin to realize that they didn't mean to go that far.

The Court: That is all they have done here. They have done no more.

Mr. E. H. Bloch: I say I have taken the law as I find [fol. 207] it and the definitions as I find them, and I say on the face of this statute as interpreted by the courts, fundamental rights of the first Amendment must be transgressed.

Let me tell you, your Honor, that was the understanding in connection with the whole controversy that engendered enactment of the Atomic Energy Act. It was because scientists raised a protest against incursions upon their right to scientific research and right to communication that Congress passed the Atomic Energy Act. Unfortunately they didn't repeal this Act or amend it so as to make it Constitutional.

Now the fact is that in the Atomic Energy Act, as in the Defense Act of 1950, as well as in the Act which empowered the High Commissioner in Germany to exercise certain powers there, they laid down certain safeguards so that these agencies or these men who were delegated the power to do certain things could not do them carte blanche. This

delegation of power made by the definitions, and by the meaning of the Gorin and Heine cases, I say, empower the military to do anything they wanted which would transgress, and the instances or at least certainly one instance, cited about the Saturday Evening Post article I think, should convince the Court how uncertain anybody can be whether [fol. 208] something will be classified today and then declassified tomorrow and reclassified four days later.

As a matter of fact, I understand that I am just saying this maybe jocularly, that a Russian magazine dealing with atomic energy which was in free circulation in this country, was marked secret by the Pentagon, and I say under this statute had anybody sent that magazine to a citizen, a subject of a foreign country, he would have violated this Act, as the Act is on its face.

What I am trying to point out to the Court is the obvious danger in the Act when taken on its face, and it must be taken on its face, because every statute is good on its face or is bad on its face, and if it is bad on its face and it transgresses upon rights under the First Amendment, then it is even bad as to those activities which could lawfully come within the competence of the Legislature to proscribe and condemn.

The Court: I have got your point.

Mr. E. H. Bloch: That is my point and I am not going to elaborate any more because you have my brief. I merely want——

The Court: Do you join in that motion?

Mr. Phillips: We all do.

Mr. E. H. Bloch: There is just one other point I want to get down for the record so there is nothing left to infer [fol. 209] that I have waived it because I am presenting this——

The Court: That is the objection to the indictment?

Mr. E. H. Bloch: The point of the indictment——

The Court: Being defective?

Mr. E. H. Bloch: It is defective because it fails to allege that the conspiracy to transmit these writings and information relating to the national defense of America to a foreign country was designed to further conduct proscribed by the statute, on which the indictment is founded, and the corol-

lary point which is really a negative statement of that, by the definitions of the Gorin and Heine cases, certain exemptions and exceptions were set forth that those people who did communicate non-secret and non-confidential material did not come within that purview of the statute; that the indictment is void because it fails to allege that the conduct claimed to have been done by these defendants or performed by these defendants fell outside that exempted and lawful area of conduct within the meaning of the statute.

The Court: Very well. Does the Government care to say anything?

Mr. Saypol: I should hardly think it necessary to even answer except in regard to the statement of counsel that [fol. 210] the courts should apply the same degree of common sense as he does. I am willing, after reading the cases, the Court of Appeals precedent in III Fed. (2d) 712 and the discourses of our own Court of Appeals and the litigation revolving around this statute, to apply the common sense used by the courts rather than that of my adversary. I think that the argument is captious; it is pedantic to say the least, and I say the motion should be denied.

Mr. Phillips: On behalf of the defendant Sobell, if your Honor please——

The Court: Well, are you going to add something now? Don't you think you have had sufficient?

Mr. Phillips: I want to clarify what happened in the Circuit Court of Appeals.

The Court: All right. That is unimportant. That will not bind me at all. Just strike from the record what I thought.

Mr. Phillips: That didn't take place at all. That motion was a motion for a stay.

The Court: I know what it was.

Mr. Phillips: And Judge Frank injected the idea that the Heine case was so worded as to make the statute constitutional.

The Court: Very well.

[fol. 211] Mr. Phillips: And for the moment I did not want to retort because I don't know yet that judges have the

power by any opinion to render a statute which in itself is unconstitutional, constitutional by reason of their opinion.

The Court: Well, who is going to decide whether it is constitutional? It is only a judge that decides that, isn't it?

Mr. Phillips: They wrote the opinion in such a way as to make the statute constitutional.

In addition to what my colleague said—by the way, I accept his motion on behalf of Sobell and join in the points that he raised. I want to point out in addition to that, that in the indictment, all the eleven overt acts charged, there isn't any mention of Sobell at all. I mean that is simply so that your Honor can get a sort of picture of the situation.

The Court: Very well.

Mr. Phillips: I want to add in addition to that that even if the constitutional points are out of the way, and the Court decides that they are not applicable, the indictment is bad in substance for these reasons: the charge in the indictment is in language too vague and indefinite. I think the language does not set forth essentially the facts constituting the offense charged as required by Rule 7 of the [fol. 212] Federal Rules of Criminal Procedure. In other words, the language of the statute is used, but not a single act indicating that that was done comes within the statute and that clearly is not the kind of an indictment, which requires that definiteness under Rule 7 of the Federal Rules of Criminal Procedure. The words "national defense" constitute a generic term under which the specific acts must be set forth in the indictment itself to make it valid. In other words, a defendant under that indictment is not told of a single act that he did which makes his act come within the purview of the indictment. Now the contents of the indictment do not set forth the facts constituting a crime under the laws of the United States of America if it is true that some acts relating to the national defense if revealed do not constitute a crime. Therefore the general statement that some one undertook to give information in relation to the national defense might mean those very acts in relation to the national defense which would not be actionable under a criminal charge. So that even if your Honor is correct in dismissing apparently the constitutional points,

although you did not rule, but I could tell from your response to the argument what is in your mind, I say that the indictment is fatally bad, and that has not been ruled on by the Circuit Court of Appeals.

[fol. 213] The Court: Very well.

Mr. Phillips: And by the way, incidentally, your Honor was under the impression that we argued the habeas corpus. We did not because the printed case on appeal has not yet been filed.

The Court: Your argument was for a stay.

Mr. Phillips: We gave the other side the printed brief. In other words, the case is ready for submission and if I had another week or ten days I could argue the habeas corpus if my adversary will facilitate that procedure. So there is no decision on that point. I didn't want your Honor to be under any such misapprehension.

Denial of Motion to Dismiss Indictment

The Court: I will take the last point first and that is with respect to the sufficiency of the indictment. My understanding of the law, of the basic requirement of an indictment is that the accused shall be sufficiently informed as to the charge which he or she is called upon to meet and that the indictment should contain such information so as to protect the defendant from double jeopardy. I have examined the indictment and I feel that it meets the requirements.

Now the argument in substance as I get it with respect to the indictment is that it should have been stated right in the indictment that the materiall that was turned over to the Soviets was of a confidential or secret nature. I [fol. 214] don't see much weight to that argument at all. I believe that the subject is sufficiently covered by a declaration as to the intention with which the defendants were acting, and the Supreme Court in effect in the Gorin case agreed with that observation by stating where there is no occasion for secrecy, as with reports relating to national defense published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign government.

Therefore when the Government alleges that the defendants intended to give an advantage to the Russian Government, it is inherent that they are charging that the defendants were turning over information which violated this statute as construed by the United States Supreme Court. Now I have cited the Gorin case time and time again. It is found in 312 U. S. Reports 1, and it held in effect that the espionage statute is sufficiently definite to apprise the public of the activities prohibited, and therefore accords with due process under the statute.

[fol. 215] There are some cases that have held that the conception of liberty, as provided for under the due process clause of the Fourteenth Amendment of the Constitution, embraces the right of free speech. I feel also that the case of United States v. Heine, found in 151 Fed. (2d), 813, a ruling by the Court of Appeals for this Circuit, construed the espionage statute so that any communication prohibited by that statute meant communications of a secret nature, and thereby the statute would not violate any rights guaranteed by the First Amendment to the Constitution. I believe that those cases impliedly, if not explicitly, held the statute to be in accord with the right of free speech, and in any event, I hold that the espionage statute does not violate the First Amendment. In effect, to give weight to the argument of the defense, that word should have been included in the indictment itself, to indicate in expressed and explicit language that the documents or plans or whatever the items might be, were of a secret nature, would be in effect to require the Government to include in indictments, a construction by the United States Supreme Court; and in view of the fact that the United States Supreme Court construed the espionage statute so that it was not violative of the Fifth and Sixth Amendments, and, in my opinion, not violative of the First Amendment, and in view of the ruling of the Court of Ap-

[fol. 216] peals in this Circuit in the Heine case, and independently of those cases, and because in my own views and research on the subject, I deny the motions of the defendants on all grounds.

We will at this time note an exception to the defendants.

Mr. E. H. Bloch: Defendants except.

Mr. Phillips: Except, if your Honor please.

Mr. E. H. Bloch: If the Court please, before you note an adjournment or adjourn, I would like to have introduced for identification, the briefs that were submitted to the Court. Now, the reason I make that request——

The Court: That is a new one on me.

Mr. E. H. Bloch: I don't want this record at any time, indicate that I have waived any of my constitutional rights. I have elaborated at some length on this whole question of the First Amendment. I did not elaborate on which I consider to be ambiguous language relating to the words "injury, advantage or reason to believe," which is incorporated in my brief.

The Court: I never heard of it.

Mr. E. H. Bloch: I just wanted to get into the record as much of my argument as the Court would allow me.

The Court: Your point in asking that your brief be marked for identification is that every point that you have [fol. 217] asserted in your brief should be considered as a point that has been actually raised vocally by you in this argument before me; is that the point?

Mr. E. H. Bloch: That is correct.

The Court: You can mark it for identification.

Mr. E. H. Bloch: That is all I ask. Thank you very much.

Mr. Phillips: That request is joined in by defendant Sobell, if your Honor please.

(Defendants' Exhibit B, consisting of two briefs, marked for identification.)

Mr. Saypol: I have two motions before you adjourn, your Honor.

The Court: Let's hear the motions.

Motion to Revoke Bail and to Remand and Granting Thereof

Mr. Saypol: I will be very brief. I move the Court to revoke the bail that has been granted, even though the defendants are in custody, to cancel the bail, remand them for the remainder of the trial.

The Court: Yes, I remand them.

Mr. Saypol: May the record show that the defendant David Greenglass has pleaded guilty to the indictment as

charged. The indictment shows that that plea was entered on February 2nd. It might have been appropriate to make that observation either in or out of the presence of the jury, in view of the questions propounded by the defend- [fol. 218] ants in respect to the evaluation, the weight that the jury would give to evidence, testimony of witnesses of that kind, but nevertheless, out of an extreme desire for care, I do it here in the absence of the jury.

The Court: Very well.

Mr. E. H. Bloch: I think the record should also show that the co-defendant David Greenglass has not been sentenced.

The Court: Let the record show it. It will be obvious, I am sure, during your cross-examination.

Mr. E. H. Bloch: I didn't quite get the point of Mr. Saypol's motion. I wanted to touch on that.

The Court: Mr. Saypol's point apparently is, in effect, he is saying that the case is not proceeding against Greenglass, in effect there is a severance; while he is named in the indictment, he is not sitting at the defense table, and he is explaining why.

Mr. E. H. Bloch: I thought Mr. Saypol moved to sever at the beginning?

The Court: Not as to Greenglass.

Mr. Phillips: May I make this observation? I recall in the course of your Honor's statement to jurors that Gold and Greenglass have been convicted.

The Court: They are convicted when they plead guilty. [fol. 219] Mr. Phillips: Well, I know, but that is not what a jury could understand.

The Court: That is what lawyers understand by a conviction.

Mr. Phillips: I know, but the jurors must have an idea that there was a trial and a conviction.

The Court: I trust to your ability as a lawyer to bring out on cross-examination that they pleaded guilty and were not convicted by a jury.

Mr. Phillips: I was hoping that your Honor would say that and thereby save me the necessity.

The Court: We will take a very short recess at this point.

Then we will hear the openings and then we will call your first witness.

(Short recess.)

The Court: Proceed.

OPENING STATEMENT OF MR. SAYPOL

Mr. Saypol: May it please your Honor, Mr. Foreman, ladies and gentlemen of the jury:

Judge Kaufman has just told you that I am the United States Attorney for this Southern District of New York. It is my duty to direct the presentation to you of the evidence that has been assembled by the investigative agencies of our Government, to prove the truth of the charge which has been made by the Grand Jury against the defendants [fol. 220] on trial here before you.

There are one or two things that might well be said of a general character before I get into a discussion of the facts in the case. I might say that that discussion, by my own choice, will be somewhat general. You will learn from me, later, that my reason for that is that the better way to judge evidence of the truth is from the witnesses rather than from the mouths of the lawyers in a case. Many of you are experienced jurors and you all appreciate what I mean.

I am conscious of my obligation and what it means to represent the citizens, the populace of this district. That means an obligation, on the one hand, to protect the rights of each individual, and, on the other hand, to protect the rights and the security of all the people by proceeding diligently against those who have offended against the laws of our land and perhaps who have dedicated themselves to the destruction of our country.

My colleagues and I at the counsel table for the Government will so conduct ourselves to the end that a fair trial is had in this courtroom by both parties in interest, the defendants and the Government of the United States.

We realize that every criminal prosecution has grave implications, both for the defendants and for the people of our [fol. 221] country. The facts, as they are developed before you here, will demonstrate that this case, where a Grand

Jury has charged a conspiracy to commit espionage in behalf of a foreign power, is one of unusual significance. The significance of a conspiracy to commit espionage takes on added meaning where the defendants are charged with having participated in this conspiracy against our country, at this, the most critical hours in our history, in time of war, around 1944.

Mind you, however, the seriousness of this charge does not make the issue complicated. The indictment returned by the Grand Jury is a simple one. The Grand Jury, as you know, is a body of citizens, like you, chosen by lot, as you were, and sworn to investigate and uncover crime. Such a Grand Jury has charged that the three defendants before you, Julius Rosenberg, his wife, Ethel Rosenberg and Morton Sobell, conspired with others to commit espionage. The Grand Jury charge is contained in a one-count indictment, which his Honor has read to you. It is charged that the three defendants, the Rosenbergs and Sobell, from 1944, until the time when they were indicted by this Grand Jury some months ago, conspired and agreed with each other and also with other conspirators, including Harry Gold, David Greenglass, David's wife, Ruth Green-[fol. 222] glass, and one, Anatoli Yakovlev, an agent and official of the Soviet Union, and with others. The Grand Jury has charged that the object and the purpose of this conspiracy by these people was their plan to deliver information, documents, sketches and material vital to the national defense of our country, to a foreign power, namely, to Soviet Russia.

It is charged by the Grand Jury that these conspirators did that with the intent that the information, the documents, the sketches and material, which I have described to you, should be used by the Soviet Union to its advantage. That is the charge which is now before you for your final judgment.

Just as you are the judges of the facts and the truth, the Court, the Judge, is the final repository of the law. At the appropriate time you will hear from Judge Kaufman concerning the law of conspiracy and other applicable legal principles; and mind you, it is the Court, not counsel on either side, from whom we, you and I and my adversaries,

must take the law. Counsel, of necessity, in order to make things clear to you, must on occasion refer to the governing law, but any such reference is, of course, subject to the final instructions of the Court.

For purposes of clarity, at this point I may say briefly that [fol. 223] a conspiracy is very simply an agreement and understanding between two or more people to violate some law of the United States. In this case, the charge is that the law which these defendants and the others agreed to violate was the law of this country, which makes it a crime to commit espionage on behalf of a foreign power.

When any one of the persons who have entered into this agreement and understanding to violate the laws of the United States does any overt act, that is, any physical act, to help along the conspiracy, to further subjectives, to carry it into practical operation, when any one of the persons having entered into this agreement does any such act, then all those other persons who had entered into this agreement and understanding with him become guilty of the crime of conspiracy. Therefore, in this case, proof of only one such overt act by any of the conspirators would be sufficient to complete the conspiracy. That is obvious, because common sense tells us that when a number of people enter into a widespread agreement and conspiracy, such as we have here, each one cannot do all of the dirty work himself; one can only perform one's particular task. The law wisely holds, however, that the particular acts that any one of the conspirators may have performed or did perform to help [fol. 224] along this conspiracy binds not only the doer of the act, but also his partners in crime, for that is exactly what co-conspirators are, partners, but in crime. That is so because he is not acting for himself alone, but with all of them and for all of them, as well as for himself.

Now, I have talked about a single overt act. In this case you will hear proof, not only of a single act in furtherance of the conspiracy by one of the conspirators, but the evidence here will show many acts by each and every one of the defendants and of the conspirators, all of such acts performed in furtherance of this conspiracy to commit espionage for the benefit of the Soviet Union.

I do not consider it necessary in this opening statement to deal extensively. The evidence, as I have said, best should

come from the lips of witnesses, for you to judge. The plot will be unfolded in that way. It will come from witnesses who participated, who were present, who saw, who heard and who will tell you what they saw and heard. They will tell you those things that they witnessed over a period of years, over the course of the time this crime covered.

The evidence will come from some witnesses, who themselves participated with these defendants in this conspiracy [fol. 225] to commit espionage in behalf of Soviet Russia. It will come from witnesses who were picked by these defendants as their colleagues and associates and partners in crime, and of course, as is the invariable experience in the course of trials like this, where the evidence comes many times from those who themselves have acted in the commission of a crime, these defendants undoubtedly will seek to attack witnesses like that, witnesses who were made partners by these very defendants, who were their colleagues, their associates and their partners, as I have said. But you will hear and you will see that these witnesses are telling the truth and that the difference between them and the defendants is that while all were in this together in the past, the witnesses have not added to their past sins by refusing to tell the people of this country, by refusing to tell you, the truth; and you will see and hear that the witnesses are telling the truth as each link in this chain is forged and put into place, by testimony, by documentary evidence, which will be revealed before you, testimony and documentary evidence which cannot be contradicted by anybody or anything in the world, because it is the truth; the testimony and documentary evidence which will point conclusively to one thing and one thing alone, the guilt of these defend- [fol. 226] ants, as charged by the Grand Jury.

The evidence will show that the loyalty and the allegiance of the Rosenbergs and Sobell were not to our country, but that it was to Communism, Communism in this country and Communism throughout the world.

Mr. E. H. Bloch: If the Court pleases, I object to these remarks as irrelevant to the charge before this Court and jury and I ask the Court to instruct the District Attorney to desist from making any remarks about Communism, because Communism is not on trial here. These defendants are charged with espionage.

Mr. Saypol: I object to this interruption.

Mr. E. H. Bloch: I beg your pardon, Mr. Saypol, but I am forced to do it.

The Court: Will somebody permit me to make a ruling here?

Mr. E. H. Bloch: That is correct, your Honor.

The Court: Mr. Saypol objects to your objection and you answer his objection and I can't make a ruling.

Mr. E. H. Bloch: I am making my objection.

The Court: The charge here is espionage. It is not that the defendants are members of the Communist Party or that they had any interest in Communism. However, if the Government intends to establish that they did have an interest [fol. 227] in Communism, for the purpose of establishing a motive for what they were doing, I will, in due course, when that question arises, rule on that point.

Mr. Saypol: That is the purpose of my remarks.

Mr. A. Bloch: Defendants except to your Honor's statement.

The Court: Very well.

Mr. Saypol: That is my object in referring to it in my opening.

(To the jury:) I am sorry for the interruption.

I have said, the evidence will show that the primary allegiance of these defendants was not to our country, I said that it was Communism, both national and international. I said that because inherent in their primary loyalty to Communism was the basic devotion to Soviet Russia, for it is that dictatorship which is part and parcel of Communism here and abroad.

The evidence will show their loyalty to and worship of the Soviet Union, and by their rank disloyalty to our country these defendants joined with their co-conspirators in a deliberate, carefully planned conspiracy to deliver to the Soviet Union, the information and the weapons which the Soviet Union could use to destroy us.

The evidence will show that Sobell and Julius Rosenberg, [fol. 228] classmates together in college, dedicated themselves to the cause of Communism.

The Court: Excuse me a moment, Mr. Saypol. I think I said to the jury before that the charge was espionage. I

want to correct that. The charge is conspiracy to commit espionage.

Mr. Saypol: Yes.

The Court: All right.

Mr. Saypol (Continuing): It will show that this love of Communism and the Soviet Union soon led them into a Soviet espionage ring. Rosenberg, you will hear, thought out this ring and when he was admitted into its inner sanctum, devoted himself to the service of that foreign country, at the expense of betraying his own country.

You will hear how Julius and Ethel Rosenberg and Sobell reached into wartime projects and installations of the United States Government, including the United States Army, the United States Navy, and industrial installations, doing work on secret Government projects, throughout the country; they reached in to obtain from people in the Armed Services and from people in positions of trust in our Government, secret information, documents and material vital to the national defense of our country, so that they could hand this material directly to agents of the Soviet Union [fol. 229] and speed it on its way to Russia.

We will prove that the Rosenbergs and Sobell, acting separately and in concert, engaged in a ceaseless campaign to recruit promising members for their Soviet espionage ring. They were ever on the lookout for those whose state of mind and sympathies were such that the Rosenbergs and Sobell thought they would be ripe for a proposition to betray this country by stealing its secrets and giving them to the Soviet Union, to advance its cause and the cause of world Communism.

You will see how the now well-known pattern of espionage was followed and how, when the secret information was obtained through these people in the Service, in Government and working on secret industrial projects, it was given to these traitorous Americans, who handed these secrets by prearrangement to agents and officials of Russia, for transmission there.

The evidence will reveal to you how the Rosenbergs persuaded David Greenglass, Mrs. Rosenberg's own brother, to play the treacherous role of a modern Benedict Arnold, while wearing the uniform of the United States Army.

David Greenglass was a Technical Sergent in the Army, stationed at Los Alamos, New Mexico, know even then to the top officials of this country only as "Project Y"; where [fol. 230] there was experimentation and construction of the most important weapon ever known to mankind.

We will prove that the Rosenbergs devised and put into operation, with the aid of Soviet Nationals and Soviet agents in this country, an elaborate scheme which enabled them to steal through David Greenglass this one weapon, that might well hold the key to the survival of this nation and means the peace of the world, the atomic bomb.

The evidence will show how at the behest of the Rosenbergs, Greenglass stole and turned over to them and to their co-conspirator Harry Gold, at secret rendezvous, sketches and descriptions of secrets concerning atomic energy and sketches of the very bomb itself. These traitorous activities, this constant concern for recruiting Americans into this espionage ring, the clandestine delivery of secrets, stolen from our Government, to Soviet agents, through these defendants, continued through these years.

There came a day, however, that a vigilant Federal Bureau of Investigation broke through the darkness of this insidious business and collected the evidence that would bring these culprits before the bar of justice, before an American jury like you. These defendants and their Soviet partners in crime, had at *at* their command various amounts [fol. 231] of money, with which to finance the escape from American justice into safe havens behind the Iron Curtain the members of this espionage ring. When one spy after another was caught and confessed, Klaus Fuchs, Harry Gold, David Greenglass, these defendants and their Soviet superiors quickly put into operation an elaborate prearranged scheme to flee the country of their birth, to seek refuge behind the Iron Curtain. These efforts to flee the borders of our country and avoid facing you followed a carefully planned pattern. Fortunately, in most instances these attempts to escape were nipped in the bud, were thwarted.

You will hear how the defendant Sobell actually succeeded in getting out of the country, in a desperate and fortunately unsuccessful attempt to flee the country.

The Court: Mr. Saypol, you have passed your allotted time. Try and rush it along a little bit, please.

Mr. Saypol: Will you give me three minutes?

The Court: Yes.

Mr. Saypol: I will say no more now, because I want you, as I have said, to have the benefit of the testimony and the evidence firsthand and directly. From this testimony, from the documents which you will see, each element of the [fol. 232] crime, each link in the chain will be put in place by my colleagues and by myself. You will see a conspiracy by these defendants to commit espionage against their country in behalf of the Soviet Union.

The evidence of the treasonable acts of these three defendants, you will find overwhelming.

The evidence will prove to you, not only beyond a reasonable doubt, but beyond any doubt, that all three of these defendants have committed the most serious crime which can be committed against the people of this country.

This evidence will point to only one possible verdict on your part, that of guilty, as charged by the Grand Jury, as to each of these defendants.

The Court: Mr. Bloch.

Motion for Mistrial and Denial Thereof

Mr. A. Bloch: If you- Honor please, I move for a mistrial in this case upon the ground that the opening statement of the learned United States Attorney was inflammatory in character and introduced an element which is not pertinent to the case or relevant to it, to wit, Communism, and made other inflammatory and damaging statements which are not part and should not be part of an opening.

The Court: Your motion is denied.

Mr. A. Bloch: Exception.

The Court: Madam and gentlemen of the jury——

[fol. 233] Mr. Phillips: May I add, if your Honor please, that all these remarks as to what happened subsequent to the alleged conspiracy, namely, fleeing the country, were quite besi-e the point, entirely improper, not relevant.

The Court: I suggest——

Mr. Phillips: Not relevant to the charge, if your Honor pleases, and made solely for the purpose of influencing the minds of the jurors in advance of any testimony.

The Court: I suggest that if you will examine the law

books, Mr. Phillips, you will find that it is quite relevant in a criminal case to introduce evidence of flight on the question of guilt.

Mr. Phillips: After the proof of the act itself has been advanced, but not in advance.

The Court: Well, the United States Attorney hasn't introduced any proof yet. He is telling the jury what he intends to prove.

Mr. Phillips: My point is, he had no business to state what he intends to prove before proving the act itself.

The Court: What is your motion?

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. Phillips: My motion is that either the Court instruct the jury now to disregard all of these inflammatory re- [fol. 234] marks, that have no relevancy to the case itself, or to declare a mistrial.

The Court: The motion for a mistrial is denied.

Mr. E. H. Bloch: If the Court please, I merely want to reserve the objection that I made.

The Court: I wish each and every one of you gentlemen would immediately arise. Invariably, as I get ready to make a ruling, somebody else jumps up.

Mr. E. H. Bloch: I thought you were through, your Honor. I am very sorry.

The Court: Now, is there some other objection that you care to make, Mr. Bloch?

Mr. E. H. Bloch: Yes, I would like to say to the Court that I persist in objecting to the objection of the Communist issue in this case subsequent to the time that I interrupted Mr. Saypol.

The Court: Very well.

Mr. E. H. Bloch: Let me assure Mr. Saypol that I didn't want to be discourteous, but I want to reserve my rights on the record.

The Court: All right, motions for mistrial are denied.

The charge in this case, again, I tell you, is conspiracy to commit espionage, in that matters vital to the national defense were transmitted to Russia for the purpose of [fol. 235] giving Russia an advantage, with intention of giving Russia an advantage. That is the charge. You are

—and I will tell you this again in my ultimate charge—to determine the guilt or innocence of a defendant on whether he or she was a Communist. That is not the basis on which you are to determine the guilt or innocence, because the charge is not Communism. However, when the question does arise, if it does arise, during the course of the trial, with respect to the introduction of evidence, if there is such evidence, as to the defendants' interest or activity participation, whatever it is, in Communism, I will then make a ruling and I will instruct you accordingly.

Mr. Phillips: May I respectfully draw the Court's attention to the fact that the Court just told the jury that the charge is that information was transmitted. That is not the charge. Nowhere in the indictment is it stated that information actually was transmitted. The indictment charges that a plan was laid to transmit information.

The Court: Very well, I will accept that correction.

The charge is that they conspired and they combined and they confederated and they agreed with each other [fol. 236] and with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the national defense of the United States.

I might state right here that a conspiracy is essentially an agreement between defendants to violate a law of the United States. The law of the United States, which the Government claims the defendants conspired to violate, was the espionage law. Now, in order to be guilty of a conspiracy, I will ultimately charge you that it is not necessary that the defendants actually complete their act or that they have success in their act. It is sufficient, if there is an agreement followed by an overt act, an agreement entered into with a criminal mind to accomplish an unlawful objective followed by an overt act, it is sufficient at this time with respect to the law.

Proceed, Mr. Bloch.

[fol. 237] The Court: Proceed, Mr. Bloch.

Mr. E. H. Bloch: Ladies and gentlemen of the jury, I am going to be very, very brief.

The Court: I can't hear you, Mr. Bloch.

Mr. E. H. Bloch: In one sense we are in the same position as you are. You have heard Mr. Saypol outline to you what the prosecution intends to prove. That is the first time we have heard officially in that way, what the prosecution intends to prove.

You heard either yesterday or today, what these defendants are charged with. The Court read the charge. We have this advantage over you; we got that charge a few weeks ago. That is about all. We have to wait. We have to see. I would like to say this to you: that Julius Rosenberg, whom I represent, was arrested in the middle of July, 1950. At that time and since that time he has and does now assert his innocence. He has pleaded not guilty to this indictment.

I would like to point out to you that we lawyers are going to get up from time to time and talk and make statements. We make objections. That is true of the prosecution's staff. That will be true of the defense staff. Please bear with us and pay very little attention to it because we are [fol. 238] not the clients. This is the clients' case, not the lawyers'. Lawyers tend to dominate the atmosphere of a courtroom. I think the Court will tell you that we are mechanics and mechanics alone. We are here to aid in the administration of justice. And that is true whether or not it is the prosecutor or whether or not it is the defense counsel, because all of us as lawyers have taken an oath to loyally support the constitution, and inherent in that is the oath to support the administration of justice.

What I would like to impress upon you now is to remember at all times, the oath that you took when you were sworn in as jurors, which followed the sequence of questions addressed to you by the Court to test your impartiality that you will render an honest and a true verdict according to the evidence and according to the law as laid down by the Court. We ask you, we plead with you, don't be influenced by any bias or prejudice or hysteria.

This is a very grave crime that these defendants are

charged with. Very grave. And this trial arises in a rather tense international atmosphere. And I think all of us delude ourselves that we believe that we are completely free from all of those pressures and influences that every minute of the day are upon us. All we are asked to do is to take this charge against these defendants, and particu-
[fol. 239] larly I am speaking, of course, for the defendant, Julius Rosenberg, and see whether the Government will succeed in proving this charge and in proving all these things that Mr. Saypol said the prosecution is going to prove. We say now that the Government will not be able to prove these charges beyond a reasonable doubt.

May I repeat, and I hope you forgive me if I repeat, and I hope the Court will forgive me if I repeat at this time: all we ask of you is a fair shake in the American way. All we ask of you is to keep your minds open until all the evidence is in, and until the Court has charged you. All we ask you is to follow the fundamental precept of law that the defendant is presumed to be innocent until you find him guilty, and that can only come about after all the evidence is in. We ask you to keep your minds open. We ask you to judge this defendant, an American citizen, as you would want to be judged yourself if you were sitting as a defendant. In short, we ask you to keep your mind open and be fair. If the evidence satisfies you that these defendants are guilty and you bring in such a verdict, let it be on the evidence, not on any collateral issue, not on any political issue unconnected with the case.

These defendants are charged with a conspiracy to com-
[fol. 240] mit espionage. The Government has to show not that they believed in one ism or another ism, but that they conspired to commit espionage.

Finally, I would like you, of course, to pay particular attention to the witnesses that appear here and judge the issues by what comes out of the witnesses' mouths. And in that connection pay very careful attention to the witness. Test yourself by the same standards which guides your conduct in your everyday affairs; is this the kind of person who is telling the truth? What motive has this person to say thus and so. And I want you to focus your attention particularly on three witnesses who we now hear will

appear for the Government. One is David Greenglass, who is a defendant here and who has pleaded guilty. In other words, he is a self-confessed conspirator. And the testimony of his wife, Mrs. Ruth Greenglass, who is an alleged co-conspirator but not a defendant, and who, and I am talking about the Greenglasses now, are related very directly to the Rosenbergs; Dave Greenglass being Ethel Rosenberg's brother, and a brother-in-law of Julius Rosenberg, and of course, Mrs. Ruth Greenglass being related by virtue of the marriage; in short, she is a sister-in-law of the Rosenbergs. Please pay very careful attention to them.

I also would like you to pay particular attention to the [fol. 241] testimony of Harry Gold. I am not going to elaborate on that. I suspect that we are going to be here a long time. We are going to have many, many weeks of combat to analyze it.

We come to you and say to you, don't be swayed by emotion. The defendants do not come to you at this time or at any other time and expect you to give a verdict on the basis of sympathy or passion or prejudice. We want you to use your mind and your reason. That is all we have a right to expect of you, but that much we have a right to expect, and we tell you that in our opinion by the time you have heard all of the evidence in this case, you will be convinced that these defendants, as they have contended at all times and as they now contend, are innocent of this crime, for which they are now being charged. So please keep your minds open.

Mr. Alexander Bloch: Ladies and gentlemen, I will be very brief. Although my son and I have represented and now represent both Rosenbergs, I have allocated to myself the responsibility of concentrating on the defense of Mrs. Rosenberg, and I have done that to emphasize her right to be adjudged and tried by you on her merits; not because of group, or her connection with other defendants in the case. You are not to condemn her because her brother is [fol. 242] a self-confessed traitor, or her sister-in-law is mentioned in the indictment and who, I understand, has not been arrested and will tell you she was guilty as charged in the indictment.

I represent Mrs. Rosenberg and I will take care of her end of the case in the course of this trial. Mrs. Rosenberg is the wife of Julius Rosenberg. She has been married for the last twelve years and has raised a family of two children, eight and four years respectively. From the very inception of this case she has protested her innocence, and I tell you, on her behalf, that she has not committed any of the acts charged in the indictment. And she will take the stand and repeat and reiterate and tell you personally that she did not conspire to do any of the acts charged in the indictment. She did not transmit or conspire to transmit any information to any government. She was a housewife, basically a housewife and nothing more. She was dragged into this case through the machinations of her own brother and her own sister-in-law, who in order to transfer and lighten their burden of responsibility, accused her of being a co-conspirator.

You will find in the course of the trial, that although Mrs. Ruth Greenglass is charged with being a co-conspirator, she has never been arrested. She has not been tried and has not been tried for the offense which is now charged [fol. 243] against her sister-in-law, Mrs. Rosenberg.

I am going to ask you, as my son did, to reserve your judgment until you have heard every bit of testimony in this case, pro and con, and after you have heard the Judge's charge, and I am quite sure if you do that you will find that Mrs. Rosenberg has committed no crime, and instead of being punished here, she should be sent back to her family to take care of her children.

Mr. Phillips: May it please the Court, ladies and gentlemen of the jury, I am one of the attorneys representing Morton Sobell.

At the outset I must say that I was not a little shocked at the opening speech of the U. S. Attorney in endeavoring in every way possible to make the thing look ever and ever so much blacker than it is. For instance, he spoke of the destruction of our country. He has spoken several times about destroying us, whereas the indictment, the charge in this case, does not even charge that these so-called conspirators did anything with intent to injure our country. Quite the contrary. The words, injure the United States,

are omitted from the indictment. Injure the United States is present in the statute. Understand that. But it is omitted from the indictment, from which we must gather that the so-called information which furnished the nucleus or the [fol. 244] objective of this alleged conspiracy was the kind of information which, if known to the Soviet Union, would not be to the injury of the United States.

Now, do not let me attempt or seem to try to mislead you. It is a criminal offense to endeavor—I hate the word conspire because the word conspire carries with it something behind the scenes of a movie. It is a crime for a number of people to agree to get together and endeavor to transmit information with reference to the national defense to another country. Whether we are at war with the other country, at peace with the other country, whether we are members of a union with the other country, whether we are fighting on the same side of the line, transmitting to the Soviet Union information is no greater a crime than transmitting information to the British Government, because the statute makes no distinction between foreign governments. The statute says, any information with reference to the national defense to any government outside of the United States is that same criminal offense.

So that this endeavor to inflame your heart because it is the Soviet Union is besides the point. To give or endeavor to give or to combine to give information as to our national defense to a country other than the United States is a [fol. 245] criminal offense. I am not trying to minimize the fact that it is a criminal offense, but for heaven sakes, why maximum it? So I would like you to be on the lookout and not be too much mesmerized by the expressions of the U. S. Attorney. The U. S. Attorney is here to win this case, to do the best he can to exhibit such information as evidence as will be important and beneficial to the side he represents. It is an equal duty of the defense attorneys to bring to you such information as will serve their defense. Neither of us is in any sacrosant position. We are no worse than he and no better than he, and let him not try to tell you how he stands up for general rights. He stands up for his position as U. S. Attorney. We are in the position of the defense. We are two sides of the fence, and in your minds and hearts, so you must treat us alike.

Now I tell you about Sobell. In the whole indictment, outside of the general language that he agreed with others to transmit information, not to the injury of the United States, but for the benefit of Soviet Russia—by the way, the word 'advantage' has been defined by the courts as meaning the same as benefit. So don't misunderstand the word 'advantage' to mean advantage to the Soviet Union over the United States. That is not the meaning of the word 'advantage.' It is a general term implying benefit, [fol. 246] favor; useful, if you will. So that in the language of the indictment Sobell is charged in these general words that he agreed with others to transmit certain information; leave out the other sketches, maps and I don't know what else. I am sure they won't be able to prove all of that or any part of it; but information is the main thing; it is just as bad; for the benefit of the Soviet Union. That is the way he is charged. 11 acts allegedly done in furtherance of the conspiracy are also charged. In not one of them, in not one of them is the name of Sobell mentioned at all. So you have a naked statement that at some time he conferred or conspired or agreed to do something, but there is nothing said here about any act of his done in furtherance of that original intention of his. Any endeavor we made to find out, friendly asking, pleading for information, making motions for information and any other way, was thwarted on all sides, and we stand here before you as ignorant of what is really meant to be charged against Sobell as you 16 ladies and gentlemen are to whom I am talking now. We will wait and have to wait, sit here like so many children, listening, waiting. What is the Government going to do here? How is the Government going to connect Sobell by [fol. 247] truthful testimony? Untruthful testimony there may be a great deal of; I don't know anything about that.

So please, as you get into the work of yours, your consciences and listening to the evidence as far as Sobell is concerned, keep your minds focused on the things that I have said.

This talk about Communism, about motives for the transmission is all absurd because this man Gold, upon whom the whole case will be based, will be shown to be an enemy of Communism. He never was and I challenge Mr. Saypol

to deny that, and let him interrupt me to deny it. This man Gold, the cornerstone, the keystone of their whole case, never, never had anything to do with Communists and was no Communist. So where is the motive of Communism? So let that at once fly out of your minds.

Of course, the air is charged all over with antagonism to Communism. And I do not care to say to you how we feel about Communism; it is unimportant, because, for heaven sakes, here are three people, two men and a woman, charged with a grave offense, in some instances punishable by death: Do not let matters economic, theories however false, however fantastic, or political belief however absurd to your own minds, or religious beliefs, if you will, or any [fol. 248] other belief sway you from the main question: What are the facts here? Our job is to find the facts and I am sure, I am sure after all the efforts that have been made to sift the jury panel, after both sides have had so many challenges, after what the Judge has said to you, and reiterated over and over again about your duty, and after the few words he said to you just this afternoon, the fate of these defendants is fairly and properly in the hands of you ladies and gentlemen who can be trusted to do the right thing.

The Court: Ladies and gentlemen of the jury, I have noticed that counsel have from time to time quoted what they believe to be the law. So that there be no misunderstanding whatsoever as this case unfolds before you, I want you to bear in mind that the law makes no distinction between transmitting or intending to transmit any information to a country whether friendly or unfriendly, because as the United States Supreme Court said in a case which is rather important on this subject, unhappily the status of a foreign government may change. So Congress has seen fit in its judgment to make it a crime to either transmit or to conspire to transmit information intending it to be to the advantage of a foreign country.

Now I had intended for us to proceed to take some testimony this afternoon. It has been a long day and we won't [fol. 249] be able to get to that. I want to tell you before you leave that we are going to be together for several weeks.

I want you to be calm during the period of the taking of testimony. Do not become impatient. We have a task before us, you and I, together. While we might be irritable and uncomfortable on occasion, yet I am sure we are all good citizens and we are going to grit our teeth and do our respective jobs. So just be calm and be relaxed and be attentive.

Our sessions will be from 10.30 in the morning until 4.30 in the afternoon. I intend to take a recess each morning at about 11.30 for a short period of five or ten minutes. I intend to recess for lunch at 1.00 o'clock until somewhere between 2.15 and 2.30. We will then take another recess in the afternoon at 3.30 and then recess for the day at 4.30.

Again, ladies and gentlemen, before you leave I admonish you not to discuss the case among yourselves, not to discuss it with anybody else, not to permit anybody to discuss it with you, and not to read or listen to anything about this case. Be prompt please at all sessions, because we can shorten this supposedly lengthy case at least in that respect if you won't keep any of us waiting.

So be in the jury room tomorrow morning at about 10.20 [fol. 249-A] if necessary.

Until tomorrow morning, good night.

(Adjourned to March 8, 1951, at 10.30 a. m.)

[fol. 250] New York, March 8, 1951; 10:30 o'clock a.m.

MOTION TO EXCLUDE WITNESSES

(The following took place before the jury took their seats in the jury box.)

Mr. Saypol: The Government has an application in respect of the usual direction for the exclusion of witnesses. As is customary, I ask that the exception be as to the agents of the Federal Bureau of Investigation, assigned to the case, and additionally, two members of the bar, who represent the defendants Greenglass, Mr. O. John Rogge and Mr. Herbert Fabricant.

Mr. E. H. Bloch: If the Court please, defense would have made that usual motion to exclude all witnesses. I would like to direct the Court's attention to the colloquy we had at

the bench yesterday with respect to the attorneys representing Mr. and Mrs. Greenglass. I told you, at that time, that I had some concern about the matter and I varied in my approach.

The Court: Then you waived it.

Mr. E. H. Bloch: I waived it. Now I would like to press it again, in this respect: I have no objection to the Rogge [fol. 251] office or one of their representatives being here while Dave Greenglass and Ruth Greenglass testify, but I see no reason why any exception should be made with respect to any other witness, unless some question of law will come up concerning the testimony of that witness, that might entitle the witness to some legal representation at that time.

The Court: I don't think that is a good objection. I think that if you have no objection to Rogge or somebody from his office being present for the Greenglasses, there is apparently another witness or another two witnesses whom they represent, and whatever would motivate you in objecting to him being present for the Greenglasses should motivate you to object to him being present for these other witnesses.

Mr. E. H. Bloch: I won't press it. There is just one further request I have to make to the Court. Mr. Saypol asked for an exception to the exclusion with respect to the agents of the Government who have charge of this case. I would like him to mention those names to the Court, so that not every agent of the Government is permitted to hear. They might have some connection with the case, but might not be in direct charge or entrusted with the responsibility.

The Court: Well, he said the agents of the FBI who were [fol. 252] assisting, as I understood it, who were assisting the Government in the presentation of the case, is that correct?

Mr. Saypol: Yes, if the Court please, who participated in the investigation and who are assisting in the presentation, as your Honor has said.

The Court: Very well.

The Clerk: All witnesses have been excluded with the exception of the agents of the FBI who have participated in the case. All witnesses will kindly report to Room 122.

The Court: Now, may I see counsel here a minute, please.

[fol. 253] (The following took place at the bench.)

The Court: On the matter of cross-examination I think that you ought to get together, defense counsel, so that there is no repetition of what has already been covered by one.

Mr. A. Bloch: We discussed it among ourselves several days ago. We want no repetition, no duplication.

Mr. E. H. Bloch: We will try to adhere to that procedure.

The Court: All right.

Mr. E. H. Bloch: While we are here your Honor, as you recollect, we submitted a pauper's oath to get the minutes gratis. Of course, they are still paupers; under the rules, I believe we are entitled to free subpoena service. I was wondering whether the Court will require a formal order on that.

The Court: Does the statute require it?

Mr. E. H. Bloch: I don't believe so.

Mr. Saypol: Yes. The statute expressly says there has to be a showing. The second statute talks about the defendant being entitled to such process as the prosecution is entitled, but I believe there is some reference to impecuniosity.

The Court: All right.

Mr. Saypol: I am afraid that the accounting office would [fol. 254] require it ultimately.

(The jury took their places in the jury box and the following took place in the presence of the jury.)

The Court: We are not late. We have had a little lawyer business here that we didn't think you ought to hear.

Proceed, Mr. Saypol.

Mr. Saypol: The clerk has a witness.

(The clerk called the name of Max Elitcher.)

MAX ELITCHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Saypol: May I proceed, if the Court please?
The Court: Yes.

Direct examination.

By Mr. Saypol:

Q. Mr. Elitcher, put yourself right back in that chair and relax and speak up so that you address yourself to me and in that way the jury will hear your testimony.
Where do you live?
A. 164-18 72nd Avenue in Flushing, Queens.
Q. You will have to talk a little louder than that.

The Court: May I suggest, Mr. Saypol, if it wouldn't inconvenience you too much, to move your little table back a little further because the acoustics are very bad in this [fol. 255] room.
Mr. Saypol: Yes, they are. Both the light and the acoustics.

Q. Now tell me again, where do you live?
A. 164-18 72nd Avenue, Flushing, New York.
Q. Were you ever employed by any agency of the United States Government?
A. Yes, I was.
Q. What agency did you work for?
A. The Navy Department.
Q. In what branch of the Navy Department?
A. The Bureau of Ordinance.
Q. During what time were you employed by the Bureau of Ordinance in the Navy Department?
A. From November of 1938 to October of 1948.
Q. Where did you hold that job?
A. In Washington, D.C. at the Navy Department.
Q. Do you know the defendant Morton Sobell?
A. Yes, I do.
Q. Would you be good enough to point him out in the courtroom if you see him?
A. Yes. The man sitting at the end of the table.
Q. That is at the end of the defense counsel table?

A. That is right.
Q. With the glasses?
A. Yes.

The Court: The record will indicate that the defendant [fol. 256] has been identified, Mr. Phillips?
Mr. Phillips: Yes.

(The defendant Sobell stood up.)

The Witness: Yes.
Q. When did you first meet Sobell?
A. Well, I probably met him first at Stuyvesant High School.
Q. Did you attend Stuyvesant High School together with him?
A. Yes.
Q. And did you afterwards attend another institution with him?
A. Yes.
Q. What institution was that?
A. The City College of New York.
Q. During what years?
A. From 1934 to 1938.
Q. Do you recall a conversation some time in 1939 with Sobell regarding the Communist Party?

Mr. Phillips: Just a moment. That is even prior to the date when the alleged conspiracy is said to have taken place. The date in the indictment is 1944.
The Court: What date? 1934, did you say?
Mr. Saypol: 1939.
Mr. Phillips: 1939 this question was. Are we going back to the beginning of the world?
The Court: Don't argue. Make your objection. You don't have to argue your point.
Mr. Phillips: I beg your pardon, your Honor.
[fol. 257] Mr. E. H. Bloch: If the Court please, before you rule on the point I would like to add an additional objection because it may come up from time to time.
The Court: Will you step up?

(The following took place at the bench.)

The Court: I would like to hear your point on that.

Mr. Saypol: Why, this is all preliminary. It is the opening of a trial. It is incidental to prove acquaintanceship, association with each other, common sympathies and ultimately intent to commit the main crime.

The Court: Do you bring that down, this association in the Communist Party, do you bring it down?

Mr. Saypol: Oh, yes.

The Court: To at or about the time of this conspiracy?

Mr. Saypol: Right into the conspiracy.

The Court: In other words, you don't have a conversation there and break off?

Mr. Saypol: Oh, no, no.

The Court: It is continuous.

Mr. Saypol: Yes, your Honor. I ask your Honor if for no other reason, to take it subject to connection. Obviously [fol. 258] there must be a starting point.

The Court: On what theory are you offering it? To prove the offense in the indictment?

Mr. Saypol: Oh, indeed not; to prove association, to prove intent, to prove motive for the crime which will be proved.

The Court: Very well. I will overrule the objection.

Mr. E. H. Bloch: I didn't finish my objection. I was going to object upon the additional ground that the question of any witness' affiliation with the Communist Party is incompetent, irrelevant and immaterial to the issues in this case and can only inject an extraneous issue that will confuse the jury and prejudice the defendants in the eyes of the jury.

The Court: Well, I have clarified that yesterday in the opening. I shall clarify it again now by an instruction to the jury as to the purpose for which this is offered.

Mr. A. Bloch: I object to Communism being mentioned at all on the ground that there is no causal connection between Communism and the crime charged in the indictment. If it is done for the purpose of showing motive, they have to show that there is some causal connection.

[fol. 259] The Court: I agree with you. I agree with you absolutely, and I must accept the good faith of the prosecutor that he will show a causal connection between Communism and the commission of the acts charged in the indictment. Your objection is a good one and I agree with that.

Mr. Saypol: It will be shown.

The Court: But I accept Mr. Saypol's statement that he will show that causal connection.

Mr. E. H. Bloch: Your Honor, just to clarify the record so that there will be no misconception in my mind, and I don't want to get up and object a hundred times to the same line of questioning because I think this objection should go right through. It hits the basic point. I was wondering whether your Honor is taking this evidence here subject to connection, this specific evidence.

The Court: I will take it subject to connection, causal connection, the connection that Mr. Bloch, Sr. has spoken of. I will take it subject to that, and of course purely on the question of motive and not as proving the charge.

Mr. A. Bloch: It is our duty to except, your Honor.

Mr. E. H. Bloch: Yes. May an exception be noted for all [fol. 260] the defendants.

Mr. Phillips: May I suggest that before proving motive it would be logical to prove the commission of the offense.

The Court: Well, I agree, but the point is that this motive apparently occurred prior to the commission of the offense. So you are taking the story backwards.

Mr. Phillips: How are we expected to be prepared to meet something that occurred in 1939 in view of the indictment?

The Court: If the offense is not proven of course the Court will have the power to deal with the charge in the indictment.

Mr. Phillips: But this conversation and everything that goes with it, we are entirely unapprised of.

The Court: That is not unusual. In the course of a criminal case, for example, while it is not applicable here, there will be matters that are brought up that are not in the indictment. For example, in establishing a crime that carries with it intent, the prosecutor can show previous similar acts.

Mr. Saypol: That was affirmed only yesterday in an opinion.

The Court: And yet that isn't any place in the indictment. So that is not an unusual thing.

[fol. 261] Mr. Phillips: Have you noticed in this charge it doesn't need to be intent, but reason to believe that it is

to the advantage of another country?

The Court: You have to have intent; you have to have criminal intent.

Mr. Saypol: Do you waive my proving intent on the record?

Mr. Phillips: If you examine this statute, every word of it, the statute reads with intent, or reason to believe.

Mr. Saypol: What does that mean?

Mr. Phillips: It means either you intend it to the advantage of the other side, or being immaterial, if you have reason to believe——

The Court: Well, certainly in your favor I would not submit this case to the jury if I didn't believe there was some criminal intent. All right, let us not argue it any further.

Mr. Phillips: In answer to a bill of particulars, in answer to a demand for a bill——

Mr. A. Bloch: Can't we arrange that the exception taken to your present ruling be equally applicable to any further questions that may be asked along similar lines?

Mr. Saypol: You don't have to take an exception.

The Court: He means objection.

[fol. 262] Mr. Saypol: Oh, yes.

Mr. A. Bloch: The objection runs right through on this question of Communism?

The Court: Very well.

Mr. Phillips: May I also point out in answer to a question by order of Judge Ryan, the only thing we were allowed, namely, when did the defendant Sobell join the conspiracy? The answer was in June, 1944. A plain answer on the part of the Government.

The Court: Well, I thought I had already passed on that objection. I had answered that before.

Mr. Phillips: I just wanted to draw your attention to it to show the difficulty we are placed under when he starts to talk about 1939.

The Court: But he is not talking about the offense in 1939.

Mr. Phillips: If it is not connected with the offense, what is it for?

The Court: I didn't say it was not connected with the offense; he is not attempting to prove the charge in the indictment; he is now on the question of motive.

Mr. Phillips: Well, I can see that we are hopelessly divided on this question of law.

The Court: Well, let me ask you this, Mr. Phillips: Have you tried any criminal cases?

[fol. 263] Mr. Phillips: Strange as it may seem, I tried several. I tried one in this very court after the last war.

The Court: I know your specialty is in the real estate field.

Mr. Phillips: Well, after the last war I tried one.

The Court: You would not be surprised if you had tried many criminal cases at some of these question that come up.

Mr. Phillips: I understand all that and I have looked up the authorities

The Court: Well, let us not prolong the argument. I get your point. Proceed.

(The following took place in open court.)

The Court: The objection is overruled, and I want to state to the jury again, that it appears that during the course of this trial the question of the association or membership in the Party, in the Communist Party, by any of the defendants will arise from time to time. I want you to understand right at the outset that the fact that they were members of the Communist Party does not establish the elements necessary to prove them guilty of the crime charged in this indictment, which is conspiracy to commit espionage. However, I am admitting this testimony on the theory [fol. 264] of motive, but the Government will have to establish that there is some connection between Communism and committing the offense charged in the indictment. I hope I make myself clear.

Mr. Saypol: The evidence will make it clear, if the Court please.

The Court: All right.

Mr. Saypol: Will the reporter be good enough to read back the preceding question to which there was objection?

(Question read.)

A. Yes, I do.

Q. Where did that conversation take place?

A. In Washington, D. C.

Q. Will you tell us what Mr. Sobell said, what you said and what both of you did?

A. Well, in 1939——

Mr. A. Bloch: Just one moment. I object to the question as being two questions in one, what he said and what he did.

The Court: All right, tell us what you said.

A. Well, we were living together in an apartment at 4925 7th Street, NW, and soon after moving in he asked me about joining the Young Communist League. At the time I said no, and for some period he continued to ask me about it and I finally did make such a move.

[fol. 265] Mr. Kuntz: If your Honor please, that is not responsive. Here he speaks about the Young Communist League and the question was in regard to the Communist Party. I think in another case one of your colleagues ruled recently that the two are certainly not identical, and I think excluded just such evidence.

The Court: Well, I will exclude it unless Mr. Saypol will tell me if he will establish that there is some connection between the two.

Mr. Saypol: He hasn't yet been permitted to finish his answer. He is telling in narrative form what transpired between him and Sobell and will come ultimately to the point where he got into the Communist Party through Sobell. If there hadn't been interruption, it would have been developed.

Mr. Kuntz: If your Honor please, on behalf of the defendant Sobell——

The Court: You want me to strike anything about the Young Communist League.

Mr. Kuntz: I respectfully——

The Court: All right, strike out anything about the Young Communist League. Get to the Communist Party.

By Mr. Saypol:

Q. Will you tell us how the circumstances under which [fol. 266] you joined the Communist Party after the conversation with Sobell?

A. Yes.

Mr. A. Bloch: One minute. I object to the question as being too general.

The Court: Repeat the question.

Mr. A. Bloch: He has offered a possible answer, wandering in all directions, and it is not pertinent to the issues in this proceeding.

The Court: Overruled.

Mr. A. Bloch: Exception.

The Court: We know the direction in which these questions intend to take the witness. We have discussed it at the bench and I assume it is in that direction that you are going, Mr. Saypol; is that correct?

Mr. Saypol: Yes.

The Court: Proceed.

A. (Continuing:) However, when I attended this meeting, it turned out that the group was being organized as a group or cell of the Communist Party and it was this which I joined.

Mr. Phillips: I move to strike that out as a conclusion of the witness. It is not a statement of fact at all.

The Court: All right, tell us exactly what led you to believe that it was a branch of the Communist Party.

[fol. 267] Mr. Phillips: Did your Honor rule on my motion to strike out the testimony?

The Court: Yes, I am sustaining your motion, I mean, I have asked him to give us the facts which led him to that conclusion.

The Witness: Shall I continue?

The Court: Yes.

A. Well, at the meeting I was told that this was to be a branch of the Communist Party and I was asked if I would take—I mean, if I would agree to such membership. I don't recall the exact oath or whatever procedure was used, and——

Mr. E. H. Bloch: I move—sorry.

The Court: Wait a minute. Let the man finish his answer.

A. —and from that time on, in attending meetings, I knew that I was a member of the Communist Party.

The Court: And is this the meeting to which Sobell had taken you?

The Witness: Yes.

Mr. Phillips: I move to strike out——

Q. Sobell wasn't——

Mr. Phillips: Just a moment, please. I move to strike out all of his testimony which relates what somebody told him at the meeting, and other conclusions.

[fol. 268] The Court: Was that in the presence of Sobell?

The Witness: Yes.

The Court: Denied.

Mr. Phillips: Exception.

Q. Did you thereafter attend meetings of this cell with Sobell?

A. Yes, I did.

Mr. E. H. Bloch: I wonder whether Mr. Saypol would fix the time, please?

The Court: Will you fix the time?

The Witness: I can only fix it as some time, let's say, two or three, four months after May of 1944—I am sorry, 1939.

Q. I will come back to that in a little while. Just one question: Did this cell, did you learn from conversations in the presence of Sobell at this first meeting or subsequent meetings, whether or not this cell had any associations with any branch, any division or any bureau of the Navy Department?

A. No, I didn't.

Mr. Bloch: Objected to as leading, your Honor.

The Court: Well, his answer was no.

Mr. Saypol: The answer was negative.

Q. Do you know the defendant Julius Rosenberg?

A. Yes, I do.

Q. Do you see him here in court?

A. Yes, I do.

[fol. 269] Q. Would you identify him?

A. The man with the mustache and glasses in the middle of the table.

The Court: The record shows Mr. Rosenberg identified.

Q. Did anybody ever ask you to obtain classified documents and information from the Navy Department for the benefit of the Soviet Union?

Mr. Phillips: I object.
Mr. A. Bloch: I object to the question on the ground it is improper in form.
The Court: What is improper about the form?
Mr. A. Bloch: It is leading.
Mr. E. H. Bloch: If your Honor please——
The Court: Overruled on that ground.
Mr. Phillips: It calls wholly for a conclusion.
The Court: Overruled.
Mr. Phillips: Of the witness' mind.
Mr. E. H. Bloch: May I just add this——
Mr. Phillips: Your Honor——
The Court: Don't argue. You have stated your point, that is all.
Mr. Phillips: May I ask that the question be repeated?
The Court: Repeat the question.

(Question read.)

[fol. 270] Mr. Phillips: It is clearly objected to for other reasons. It is objectionable that somebody asked him to do something in the interest of the Soviet Union. That involves three different states of facts in one question.
The Court: I will sustain that.

By Mr. Saypol:

Q. Where were you living in 1944, in the summer?
A. At 247 Delaware Avenue, SW, in Washington.
Q. About that time did you see the defendant Rosenberg?
—. Yes, I did.
Q. Tell us the circumstances under which you saw him.
A. Well, one evening, it was early, before supper, I received a phone call from a person who said he was Julius Rosenberg.

The Court: When was this?
The Witness: In June, 1944.

A. (Continuing) He said that he was a former classmate. I remembered the name, I recalled who it was, and he said he would like to see me. He came over after supper, and my wife was there and we had a casual conversation. After that he asked if my wife would leave the room, that he wanted to speak to me in private. She did and he then said to me—he talked to me first about the job that the Soviet Union was doing in the war effort and how at present a good deal of [fol. 271] military information was being denied them by some interests in the United States, and because of that, their effort was being impeded. He said that there were many people who were implementing aid to the Soviet Union by providing classified information about military equipments, and so forth, and asked whether in my capacity at the Bureau of Ordinance would I have access to and would I be able to get such information and would I turn it over to him.

Q. Now, let me ask you this question: In the course of that conversation, was there any talk about the place where you worked or the kind of work that you did?

A. Well, in the earlier conversation he asked me, and he spoke to my wife—we all asked each other what we were doing, and it was established that I was working in the Bureau of Ordinance and what I was doing there.

Q. Did you tell him what you were doing?

A. At the time I was working on computers—well, I was in the fire control section in the Bureau of Ordinance, and I was working on computers for anti-aircraft control and other computers involving fire control.

Q. Would you just digress for a moment and tell us what you mean or what was meant by the term "classified" information?

[fol. 272] Mr. E. H. Bloch: I object to that upon the ground that this witness has not been qualified as an expert.

Mr. Saypol: I don't think it requires any expertness to describe the term.

By the Court:

Q. You said you had been with the Navy for 10 years; is that right, approximately 10 years?

A. That's right.

Q. And during that period of time you dealt with information that was characterized as "classified" and "non-classified"?

A. That's right.

Q. As far as Navy personnel was concerned, was that defined for them?

A. Yes.

Q. Would you please define it for us?

A. Well, the first classification is "restricted", which is information which is—which is not permitted to be released to the public, I believe, only on some specific means, such as press releases. There was "confidential", to which no one but authorized people have any access or any authorized access. Then there is "secret," which is a stage beyond "confidential." The equipment which I worked on varied from "restricted" to "confidential," that is, at that time.

Mr. E. H. Bloch: Now, if the Court please, I press my [fol. 273] objection, because from the explanation given by this witness, he hasn't used the word "classified" once. He has merely enumerated three groups of information and I assume that when your Honor propounded the questions to the witness it was to test his qualifications as an expert, but I have heard nothing and I don't think anybody has heard anything——

The Court: All right, you don't have to go along.

Mr. E. H. Bloch: I am sorry. As long as I made my point.

The Court: Please state your objection in short form. You all have a habit of going on longer. Please give me come credit for some intelligence, too.

By the Court:

Q. Did I understand you to mention "classified" also?

A. I don't recall that I did, but the terms, the word "Classified" was used in the Navy Department, but generally we spoke of something being "confidential" or "restricted," but the terms were used synonymously.

By Mr. Saypol:

Q. Well, in fact, these categories that you have described, were generally embraced in the broad term "Classified"; that is what "classified" meant?

A. That's right.

[fol. 274] Mr. Phillips: I object to the District Attorney telling him what he means.

Mr. E. H. Bloch: I object.

Mr. Saypol: Well, your Honor, it is a matter of public information.

The Court: It is a simple thing. Let us not get too excited.

Q. Now, just to clear the picture a little more, did you tell Rosenberg at the time that the type of work you were on included computers and something about fire control? When you talk about fire control, you mean the control of conflagrations, flames, or something else?

A. No, I don't.

Q. What does that mean?

A. Well, it has to do with the equipment that deals with the eventual aiming and firing of missiles against the targets.

Q. You mean from different types of guns?

A. That is correct.

Q. From cannons?

A. That's right.

Q. Well now, having told that to Rosenberg, will you then continue with what he said to you, as you testified a little while ago? I think you told us that he had said something about there not being adequate supply to Russia of [fol. 275] information of this type, that it could use; will you continue then with what he said?

A. Well, he asked about any plans or blueprints or anything that might be of value, and that all these things are needed, and that the choice would not be mine, if I had some such information, they should be turned over and someone would evaluate them. He said that this information, if I would agree to do so, should be taken to New York, to him, and he would have it processed photographically and the material would be returned. He said that

this would be done in a very safe manner, that is would be brought one night; it would be processed immediately and could be returned almost within a short time, so it could be returned before it was missed. He also indicated the security of these means, that is, that the material was to be carried in containers which would offer protection, that is, the film would be exposed if tampered with by unauthorized people, and he generally tried to assure me that the operation would be safe, as far as I was concerned.

Q. We will come back to that again in a little while. I want to go on to another subject momentarily with you. Will you project yourself, if you will now, into the year 1947. At that time do you know whether the defendant Sobell was employed?

[fol. 276] A. He was employed some time in '47 at the Reeves Instrument Corporation.

Q. Where was that located?

A. At 215 East 91st Street, in New York.

Q. At that time you were still working in the Navy Department?

A. That is correct.

Q. In the course of your employment in these years that you mentioned, was it incidental to your employment and part of it for you to go to different plants located throughout the country to examine and confer in connection with the work, the type of work you have told us about, that you were working on?

A. Yes.

Q. For instance, were there times when you went to the General Electric plant at Schenectady?

A. Yes.

Q. Was it in connection with that official purpose of your work that you went at one time to the Reeves Instrument plant, in New York City, where Sobell was employed?

A. Yes, that is correct.

Q. Now, at this time in 1947, when you visited this Reeves plant where Sobell was employed, did you have a conversation with him or did he have a conversation with you regarding Soviet espionage?

A. Yes.

Q. Will you tell us what the conversation was?

A. Well, he inquired as to whether I knew of any engineering graduates or students——

Mr. Phillips: I can't hear the witness' answer.

[fol. 277] The Witness: I am sorry.

The Court: Speak up; speak up louder.

A. (Continuing) He inquired as to whether I knew of any engineering students or engineering graduates who were progressive, who would be safe to approach on this question of espionage, of getting material.

Q. Well, in speaking with you about that, concerning the possible recruits, was anything said concerning their association or their ideology or their contacts?

Mr. Phillips: Just a moment. There are too many questions in one; sociology, ideology, contact; which does he mean?

The Court: Overruled. He means either or any of them.

Mr. Phillips: Exception.

A. Well, I don't recall the exact definition that was made of these people, but the indication was that they would be progressive people, whom I knew to be safe, who could be asked about such getting of material.

Mr. E. H. Bloch: I move to strike out the latter part of the answer after "indication" as not being proper words.

The Court: Will you read it back, please, read the question and answer.

Mr. Saypol: Let me——

[fol. 278] The Court: Do you want to strike out the answer?

Mr. Saypol: Yes, let me withdraw the question.

Q. What was the substance of the conversation, if you can't recall the exact words?

A. Well, the substance was if I knew of students who were progressive, or, in other words, safe, safe for someone to ask about getting such information.

Q. When you say "safe" in getting such information, you mean for similar——

Mr. Phillips: Just a minute. I object to the attorney for the people telling him "do you mean" anything. What he

says is what he says. That stands, not the lawyer's mentioning what he is interested in.

The Court: You mean, Mr. Saypol can't ask him another question on the same subject?

Mr. Phillips: Not another question which involves saying, "You said so and so; by that do you mean so and so"? That is what I meant.

The Court: Overruled. Ask him what he means by that.

Mr. E. H. Bloch: If the Court please, may I just add the additional objection that the vice is the leading suggestive character of the question, and I rise now, not only in connection with this question, but——

[fol. 279] The Court: I understand you. Ask him what he meant by it.

By Mr. Saypol:

Q. Did Mr. Sobell tell you what he meant when he said that he wanted to get these recruits, for what purpose he wanted to get them, for what purpose they should be gotten, what they were to do?

A. You mean, what was the intent of getting these people?

Q. What did he say to you about the intention of getting these people? What were they intended for?

A. They would be approached concerning this question of espionage, of getting of classified material, if they could get into position where such material would be available to them.

Q. Well now, having asked you those broad questions, Mr. Elitcher, I shall go into some detail with you. You say that you were born in the City of New York, or did you say?

A. Yes.

Q. When?

A. September 1, 1918.

Q. Are you married?

A. Yes.

Q. When were you married?

A. In May of 1943.

Q. Do you and your wife have any children?

A. Yes.

Q. How many?

A. Two.

Q. What are their ages?

A. One is five, a girl; and the other is 14 months, a boy.

[fol. 280] Q. Your wife's name is Helene?

A. That is correct.

Q. You had your public school education here in the City of New York, did you not?

A. Yes.

Q. Then you attended Stuyvesant High School together with Sobell?

A. Yes.

Q. You graduated from the College of the City of New York in 1938; is that correct?

A. That is correct.

Q. Were you awarded a degree upon graduation?

A. Yes.

Q. What degree did you take?

A. Bachelor of Science in electrical engineering.

Q. It was after your graduation with that degree in 1938 that you found employment with the Bureau of Ordinance, in the Navy Department?

A. That's right.

The Court: What was that degree?

The Witness: B.S. in electrical engineering.

Q. Just to carry on your employment after 1948, did you have other employment?

A. After 1948, yes; I went to work at the Reeves Instrument Corporation in November—October of 1948.

Q. How long did you continue there?

A. Until May 2, 1951, last week.

Q. Did you say "May"?

A. I am sorry, March.

Q. Are you presently employed?

A. No.

[fol. 281] Q. What kind of work was done at the Reeves Instrument Company?

A. Well, the company does work, military work, for the Services. Well, they do computing work. There is fire control system work done, some radar work, that is about it,—a broad field.

Q. That is work connected with the national defense?
A. That is correct.
Q. That is the same kind of work——

Mr. Phillips: Is it possible to instruct the witness to talk a little louder?
The Court: Yes. Will you please speak a little louder? The acoustics here are very bad.
Mr. Phillips: He begins all right and then drops his voice.

Q. Now, you told us that Rosenberg came to your house in the summer of 1944, June, I think you said?
A. Yes.
Q. 244 Delaware Avenue, in Washington?
A. That is correct.
Q. Is that the first time you met him?
A. After school, yes.
Q. When you say "after school," did you know him at school?
A. Yes, he was in the same class at school.
Q. Did he attend any of the classes which you were at, [fol. 282] at City College?
A. Well——

The Court: Now, when you talk of "school," what school are you talking of?
The Witness: City college of New York.

A. I don't recall him as being a member of any particular class.
Q. Sobell, I think you said, however, you met at Stuyvesant High School?
A. Yes.
Q. Did he afterwards attend City College with you, too?
A. Yes.
Q. Did you go through City College together?
A. Yes.
Q. I take it then that Rosenberg, Sobell and you studied engineering at City College together?
A. Yes.
Q. While you were at City College, did the three of you have any conversations together, at any time?
A. Yes.

Q. What were some of the subjects that you talked about, aside from the technical phases of the studies which you were pursuing?

Mr. Phillips: That is subject to the same objection.

Mr. Saypol: This is again with the same object as was indicated to the Court at the bench.

Mr. Phillips: I wanted to be saved the necessity of ob-
[fol. 283] jecting.

The Court: Very well. Will you try and fix the period of time for us?

Q. That would be 1937-'38?

A. That's right.

Q. Around that time?

Mr. E. H. Bloch: I thought that we had made it clear, your Honor, that our objection to this line of testimony was with respect to political.

The Court: If it pertains to the same subject matter, you have the objection. In other words, if it goes to the question of motive as distinguished from the actual proof of the indictment itself, on this same question of communism, you have your objection.

Q. Tell us what were those conversations of mutual interest to the three of you?

A. Well, I had been asked by some students at the School of Technology——

Mr. A. Bloch: A little louder, please? I can't hear you.

The Court: You must remember to talk up. Talk to that marshall in the back of the room.

A. I was asked by some students at the School of Technology—this was near—in the senior year, near graduation—as to whether I would be willing to join some, a group of young Communist League, a group of the Young Communist League, and I recall that Sobell and Rosenberg
[fol. 284] being two who did inquire about joining such a group.

Q. You mean, they inquired of you whether you were willing to join such a group?

A. That is correct.

The Court: Well now, on this business of the Young Communist League, I have nothing to indicate before me that there is any causal connection between that and the charge in the indictments.

Mr. Saypol: It leads into that.

The Court: Is there a causal connection between the Young Communist League and the Communist Party?

Mr. Saypol: Well, your Honor, if I may recall, his conversation with Sobell in 1939, as a result of which he joined the Communist Party; immediately preceding that was the conversation about the Young Communist League, so it leads right into it.

Mr. E. H. Bloch: I think, your Honor, that this question and answer also have the additional objection that the witness has not connected any of these defendants with what was said to him, and what he did in reliance upon what was said to him. He said, "Some students at the college asked me about it."

The Court: Yes, I am going to sustain the objection.

Mr. Saypol: But he has also said that this was in the [fol. 285] presence of the defendant, if the Court please.

The Court: No, I will tell you, on this question of the Young Communist League, unless there is some discussions there that bring it within the four corners of my ruling, I am going to exclude it.

Mr. Saypol: Well, if your Honor pleases, I submit this, whether it is the Young Communist League, or whether it is the Horatio Alger Progressive Club at City College, or whether it is the members of a civic club at City College——

The Court: Regardless; correct, regardless of——

Mr. Saypol: What I am showing is that these people were not strangers to each other, that they had something in common there, as far as this goes, that it ultimately led into the gravamen of the crime.

The Court: I understand that, but their point of objection is, if you mention the Horatio Alger Club, I am sure they would have no objection. Their objection is to the mere mention of that word in connection with the Young League, that it is of an inflammatory nature, and unless there is some direct connection, or they preach certain principles that would indicate that it was consistent with

what they did subsequently, as charged, I am going to exclude it.

[fol. 286] Mr. Saypol: If your Honor pleases, no stigma attaches that way. These were the circumstances of the association. If they had a league there for the reform of counterfeiters and they got together and they talked about those things——

The Court: Did they talk about those things?

Mr. Saypol: Well, he was testifying that they did, the evidence was a common objective.

The Court: I will reframe your question for you.

By the Court:

Q. You were at City College between what years?

A. '34 and '38.

Q. During 1934 and 1938 did you meet with the defendants Rosenberg and Sobell on occasions?

A. Yes.

Q. Would you say you met with them on many occasions?

A. Yes.

Q. How often would you say you met with them?

A. Well, with Sobell, I probably met once a day and—possibly—with Rosenberg, less than that. I don't recall very much of him.

Q. I take it that you belonged to certain organizations with him; is that correct?

A. Yes.

The Court: Now, without mentioning the organization that he belonged to, will you proceed with your question.

[fol. 287] By Mr. Saypol:

Q. Aside from the association with Rosenberg and Sobell in classes, did you see him at any other places, in connection with the attendance at school?

A. No, I did not.

Q. Did you see him at any extracurricular places, at any——

Mr. E. H. Bloch: I object to it upon the ground that the witness has already answered.

Q. Did you attend any meetings with him?
A. Well——

The Court: Well, maybe he is jogging his memory.

Q. Did you attend any meetings with him?
A. I don't recall attending any meetings with him.

The Court: Now, Mr. Saypol, I want to get this clear now. If you are prepared to establish that the Young Communist League preaches the same principles as the Communist Party, I will permit you to ask these questions.

Mr. Saypol: I think I am, but in order to protect the record, perhaps we might do it at the bench.

The Court: All right, step up.

(The following proceedings took place at the bench, outside the hearing of the jury.)

[fol. 288] Mr. Saypol: Your Honor, we are prepared. That is our objective. I am going to prove the crime; I am trying to prove common association, common purpose.

The Court: Fine, you go right ahead and prove this association, but when you are proving it in an organization which they contend a mere mention is inflammatory, that is their point. You have a right to prove association.

Mr. Cohn: Your Honor, I don't know whether it is inflammatory or not. I don't know if it has anything to do with it. I think it is admissible and proper.

The Court: No, Mr. Cohn, that isn't true. The inflammatory nature of it might have some weight on whatever point you have to make.

Mr. Cohn: I can't agree with you. I think it is relevant. Your Honor, on this point you have testimony of the witness, a picture that they were in college together in 1944; Rosenberg identified himself as a former classmate and as a friend, and approached him and asked him to engage in these activities. After that he had a conversation with Sobell in '47, in which he was asked to recruit progressive and safe people. I don't think there is any doubt that Rosenberg approached him, and specifically in Sobell's words, the approach to the other people was made on the [fol. 289] basis of their having progressive views and on the basis of their being safe, and undoubtedly the approach

is made to him on the same basis and the same reason, and I think it is perfectly proper to show they were associated together in activities of that bent and that the two defendants knew he was inclined along those lines.

The Court: I agree with you.

Mr. Cohn: Therefore he was approached as a safe person and he was asked to approach other persons, people of safe and progressive views, as being safe.

Furthermore, on the question of motives, I don't think there is any doubt——

The Court: There is no difference of opinion on that at all, and I have been asking repeatedly for Mr. Saypol to tell me that the Young Communist League preaches or expounds some principles that would be consistent with the ultimate charge.

Mr. Saypol: The answer is yes.

The Court: I haven't had an unequivocal answer yet.

Mr. Saypol: The answer is yes.

The Court: Well, if I have an unequivocal answer, I will permit the question.

Mr. Saypol: The answer is yes, and there is proof of that if it has to be submitted.

[fol. 290] Mr. A. Bloch: You are taking it subject to connection?

The Court: That's right.

Mr. E. H. Bloch: If the Court pleases, as I understand the way your Honor is thinking, and especially Mr. Saypol's response, Mr. Saypol is now representing to the Court that he will show the Court that the Young Communist League, as an organization at that time, espoused views consonant with illegality, or which would make it an organization that would bear on the issues in this case, in other words, that there would be that causal and direct and intimate connection.

Mr. Cohn: It can only be shown that it is an organization——

Mr. E. H. Bloch: Oh, well——

The Court: Let him finish.

Mr. Cohn: You said that awfully fast. I am basing it exactly on the testimony that has been adduced by the witness here. He was asked by one of the defendants to

approach people who had progressive views and who were safe.

The Court: In 1947.

Mr. Cohn: Undoubtedly, yes, your Honor.

The Court: All right. Now, let's go back. You are talking about belonging to a league in 1937.

[fol. 291] Mr. Kuntz: '34.

The Court: It was easier to say 1937.

Mr. Cohn: I don't know that it is '34 or '37. I think there was continuation of that association in the Communist Party in Washington, when Sobell was down there.

The Court: Now, you are beginning to equivocate again. I want an unequivocal answer. Is there some connection between the Young Communist League—are you going to establish it—and the ultimate principles that were established in it?

Mr. Cohn: I don't think we can establish that the Young Communist League at meetings told members to go out and steal classified information. I certainly think we can establish that the Young Communist League and the Communist Party both were progressive organizations which believed in Soviet Russia as a model and a guide.

The Court: Are you going to establish that?

Mr. Cohn: I don't think there is any doubt about it.

The Court: Are you going to establish that there is any difference between the Young Communist League and the Communist Party?

Mr. Cohn: There is a difference in regard to age.

The Court: Is that all?

[fol. 292] Mr. Saypol: That is all.

Mr. Cohn: Yes, we can offer documentary proof.

The Court: Is that all, again, I ask you?

Mr. Cohn: I don't think there is any difference.

Mr. Saypol: Yes, official documents of the Communist Party describe the Young Communist League as a student party adjunct.

Mr. Kuntz: That was excluded in the Remington case.

The Court: The reason for that was because there Mr. Remington was charged with having committed perjury, in that he lied about being a member of the Communist Party.

Mr. E. H. Bloch: Wouldn't it have been logical for the——

Mr. Cohn: It would have been.

Mr. E. H. Bloch: Just following Mr. Cohn's argument——

Mr. Cohn: Your Honor——

The Court: He is making an argument and I would like Mr. Bloch's reply.

Mr. E. H. Bloch: If the Young Communist League is considered to be one of these safe and progressive organizations, I say, in the Remington case, just in accordance with [fol. 293] fixing the minds and the intent of the defendant, the Government should have been able to prove, according to Mr. Cohn, his association with the Young Communist League, but the Court rejected that proposition.

Mr. Saypol: And very properly so, and the reason for that—I shouldn't say "properly," but appropriately—the Court didn't reject it there because our objective was to prove membership in the Communist Party, not the Young Communist League.

Mr. Cohn: I didn't agree with the Court's ruling at the time. I don't think it is in accord with any rulings of any Appellate Courts on the subject.

The Court: There are very few rulings by the Appellate Court. The point I want to get to is, I have no problem at all, if you will tell me—and you run the risk in doing so—that there is no difference between the Young Communist League and the Communist Party, as far as principles that are espoused, in that both have as one of their principles, aiding the Soviet Government, as you have indicated before.

Mr. Cohn: I would say, your Honor, as far as the Young Communist League and the Communist Party are concerned, the Soviet Union experiment is pointed to by all the members and pointed to the direction of all the members as [fol. 294] being the ideal something, worthy of the greatest admiration and support.

Mr. Saypol: That is the God that they direct themselves to, both of them.

Mr. E. H. Bloch: Look, your Honor——

Mr. Saypol: Let me say that we are getting ourselves into unnecessary and immaterial collateral matters, in so far as the furor and fuss is being made. I am going to prove that these people committed espionage; I am showing that

these associations, as I have said, are for the purpose of showing their intent, showing their purpose, and if there is so much fuss about it I will just pass right over it.

The Court: Well, this is off the record.

(Discussion off the record.)

[fol. 295] Q. After your graduation some time in 1938, did you move to Washington?

A. Yes, I did.

Q. And when did you first arrive in Washington, D. C.

A. It was, I believe, the 1st of November, 1938.

Q. Some time toward the end of the year?

A. That is correct.

Q. Where did you first live when you got to Washington?

A. At, I think it was, 1466 Columbia Road, Northwest.

Q. Did there come a time when you moved to Delafield Place?

A. Yes.

Q. When was that?

A. In December of 1938. 1316 Delafield Place.

Q. Did you see Sobell around that time?

A. Yes.

Q. Where did you see him?

A. Well, sometime in December he came down to Washington looking for a position. He had not been referred to a particular job but he was looking for one. He had come to Washington to see if he could get closer to where jobs were available. He stayed at a house next door; that is, he slept at the house next door to 1316 Delafield Place, but not part of our own household at 1316.

Mr. Phillips: The witness is talking too low again.

The Court: Yes. Talk to the marshal back there. He wants to hear your story.

[fol. 296] Q. Some time, a month or two thereafter, did you move from Delafield Place?

A. Yes. The house broke up in, I think, January of 1939 and I moved to a room at 4925—9th Street.

Q. After that, a month or two or three months beyond that did you move again?

A. Yes.

Q. Where did you move to?

A. 4925—7th Street on the top floor of a private home, an apartment.

Q. When was that, do you remember?

A. It was either April or May. I believe May 1st probably of 1939.

Q. Did you have any conversation with Sobell regarding that move?

A. Yes.

Q. What was the conversation?

A. Well, he was interested in starting an apartment with someone, with me, and through his inquiring about this, I finally decided to make such a move and take an apartment.

Q. Well, in these intervening two month-, I take it, Sobell had remained at 1312?

A. I believe so, yes.

Q. Then in April of 1939 did he move again?

A. Yes. He moved into the apartment with me.

Q. In other words, the two of you were together. How Long did you stay there?

A. We stayed there about a year until May of 1940.

Q. What happened then?

A. We then took another apartment, a regular apart-[fol. 297] ment in an apartment house at 2225 N. Street, N. W.

Q. How long did you remain there?

A. Well, I remained at the apartment until about October of 1941. Sobell left in September to go to the University of Michigan.

Q. Now that was in September, 1941, that he left to go to the University of Michigan, is that it?

A. That is correct.

Q. Now, in the interval between December, 1938 and December, 1941, do you know where Sobell was employed?

A. At the Bureau of Ordinance.

Q. That is the same place with you?

A. That is correct.

Q. Now, you have told us about the conversation with Sobell regarding membership in the Communist Party, is that right?

A. Yes.

Q. Do I recall correctly, do I understand correctly that preceding your actual attendance at the first meeting with him the conversation between you was about the Young Communist League?

A. Yes.

Q. Now, will you tell us again about the conversation with him leading up to this joining of the party by you?

A. Well, he talked to me about the need for joining such an organization in Washington, what its purpose was, what it was to achieve. I don't recall the complete conversation. [fol. 298] There were more than one. They all were leading up to my joining this group.

Q. When was it that you finally joined the party?

A. I don't know the exact month or date.

Q. About what year?

A. Oh, it would be in 1939. Before the end of 1939.

Q. Can you tell us how many constituted membership in the group you joined at Sobell's suggestion?

A. Well, the group that I came down to when I joined, I think there were about maybe fifteen people there.

Q. Yes.

A. And we were divided up into groups, into smaller groups, and I met—after I met only with four, three or four people at a time.

Mr. A. Bloch: Won't you please keep your voice up? You sink down lower as you go along.

Mr. Saypol: Mr. Bloch, if you will suggest to me, I will address the witness and ask him to do it or so conduct myself that he will.

Mr. A. Bloch: It is done so spontaneously.

Mr. Saypol: Will the Court suggest to Mr. Bloch if he will make the suggestion to me, I will guide the witness accordingly and in that way avoid any interruption.

The Court: Proceed.

Q. Was there anything common about the members of this group of four or five you told us about in respect to [fol. 299] their employment?

A. Yes. I would say all of them were members of the Government.

Q. Any particular branch of the Government?

A. No.

The Court: Will you try to bear in mind—perhaps this will help: Suppose you were addressing a group; will you speak in that tone of voice?

Q. Now, in this group, should I call it a cell? Was it described as a cell at that time?

A. I don't believe we used that word. A group or branch.

Q. Did Sobell remain in that group with you?

A. Yes.

Q. Or branch?

A. Yes.

Q. Will you tell us something about the meetings of that group? Where were they held?

A. The meetings were held in the homes of the various members in sort of rotation.

Q. How about the payment of dues? Was there any payment of dues for the membership?

A. Dues were paid at the meetings, yes.

Q. To whom were they paid?

A. They were paid to someone who was the chairman or called the chairman of the group.

Q. Was there any time when Sobell acted as chairman of the group?

A. Yes. At the beginning, at these first meetings he was the chairman. I don't recall how long a period that en- [fol. 300] compassed.

Q. Incident to dues——

Mr. Kuntz: Excuse me, Mr. Saypol, I take it all this is taken subject to our objection?

The Court: Yes.

Q. Do you recall incident to his presiding or acting as chairman whether any dues were paid to him by you, or did you see others pay dues to him?

A. Well, dues were paid to the chairman only. The chairman transferred the dues to other people. I don't recall the payment of the dues to him specifically.

Q. What transpired at these meetings in Sobell's presence.

Mr. A. Bloch: Objection.

Q. (Continuing:) Regarding the party or your work? Will you tell us?

A. Well, regarding the party, there was discussion of new events, specifically from readings of the Daily Worker. There were discussions of Marxist theory, Leninist theory, and also discussions of articles from the Communist. Literature like the——

The Court: Speak up.

The Witness: Literature like the Communist. That made up the bulk of the discussions at the meetings.

Q. Did you receive any official instructions at these meetings?

A. Well, there were instructions——

[fol. 301] Mr. Phillips: Just a moment. I object to the expression official instructions. Official from whom?

The Court: Did you receive any instructions?

The Witness: Yes. Some.

Mr. Phillips: Just yes or no.

The Witness: Yes.

Q. Did you receive any of those instructions from Sobell as chairman of the meeting?

A. Yes. They would come from the chairman, yes.

Q. Were there any discussions concerning Communist infiltration, including reference to front organizations?

A. Well, there was a suggestion, recommendation to join certain organizations in Washington, organizations that were operating in Washington. One of them was the American Peace Mobilization. When the American Youth Congress had its congress in Washington there was a suggestion to assist them, to help in the activity.

Q. At this time do you recall what the situation was in respect to the Hitler-Stalin pact?

A. I think——

Mr. E. H. Bloch: Objected to as incompetent, irrelevant and immaterial to the issues in this case.

The Court: Overruled.

Mr. E. H. Bloch: Exception.

The Witness: Well, at the time the pact was in effect, I believe.

[fol. 302] The Court: Will you fix the time? What year was this?

Q. 1939 and 1940?
A. Yes, sir.

Mr. Saypol: I have the official date of the existence of that pact if it should go into the record. I think it was August 25, 1939. I think it was August, 1939 to June, 1941.

Q. Were any instructions issued by the chairman with respect to the attitude of the members of the cell in so far as the attitude toward Russia was concerned in the light of the existence of the Hitler-Stalin pact?

Mr. E. H. Bloch: If the Court please, although you have overruled my objection, I would like to object to the question upon the ground that it is leading and suggestive.
The Court: Overruled.
Mr. E. H. Bloch: I respectfully except.
Mr. Kuntz: I take it, if your Honor please, the ruling on the objection applies——
The Court: I said yesterday that all rulings on any objection taken by Mr. Bloch will apply to your client and vice versa unless you indicate to the contrary that you don't join in the objection.
Mr. Kuntz: Thank you.

(Last question read.)

[fol. 303] The Witness: Well, I know that instructions did come down concerning the attitude on the pact, and they would be transferred by the chairman.
Q. What did the chairman say about the attitude, what your attitude should be or what the group attitude should be?
The Court: Not what he would say; what did he say?
Q. Yes.
A. Well, the pact was in effect and support was to be obtained for the pact for the Soviet Union's position, and we were to talk with people and to get general support for the existence of the pact and its aims.
Q. In the course of that pact, of course, Russia was an ally of Hitler, isn't that so?

Mr. E. H. Bloch: I object to the question on the ground that that not only is not the fact; it involves political controversy and discussion outside of the issues in this case. Historians disagree on that.

The Court: I sustain the objection. Well, the fact is that there was a pact in existence between Germany and Russia at that time, is that correct?

The Witness: That is correct.

Mr. Saypol: That is no different from what I asked, if the Court please.

The Court: Well, he didn't like the way you had asked it. Is this a convenient place to pause?

[fol. 304] Mr. Saypol: Yes.

The Court: Ladies and gentlemen, you may retire to the jury room.

(Short recess.)

Mr. Saypol: May I proceed, your Honor?

The Court: Yes.

By Mr. Saypol:

Q. At these group meetings at some of which Sobell acted as chairman, about which you have testified, did any discussion take place amongst those present regarding the position of the group as a unit of the Communist Party relating to Soviet Russia?

A. Yes.

Mr. E. H. Bloch: If the Court please, may I ask the Court to make clear to the jury now that any testimony with respect to Sobell is not binding on the defendant Rosenberg unless the main charge is proved?

The Court: That is quite right. Any testimony concerning this witness' association with Mr. Sobell at this time they are talking about, in 1939 and thereabouts, is not to be received as against Mr. Rosenberg nor Mrs. Rosenberg.

Mr. Phillips: Likewise that is true the other way.

The Court: That is true the other way, too.

Mr. Phillips: Any conversation relating to Rosenbgerg——

[fol. 305] The Court: Unless it occurred during the period of the conspiracy.

Mr. Phillips: Yes.

The Court: After the conspiracy has been established.

Mr. Saypol: Likewise I think it should be stated to the jury, that there will come a time that I will establish that and all of these objections will prove futile.

Mr. Phillips: I think that is an unfair statement, if the Court please.

The Court: Disregard it. I will give you the proper legal instructions at the proper time.

Mr. Saypol: Now let us get back to the business at hand.

(Last question and answer read.)

Q. What was the discussion and what instructions did you receive as part of that discussion?

A. Well, the instructions in regard to this question involved continuous support of the Soviet Union and as a result, I mean from this, through the fact that we were to go out and to gain support from people around us for the position of the Soviet Union.

Q. How long did you and Sobell continue attending these Communist group meetings?

A. Well, it would continue until September, 1941.

[fol. 306] Q. Do you recall the names of some of the persons? In addition to Sobell, do you recall the names of any other persons who attended these meetings?

A. Well, at the first meeting I recall a limited number.

Mr. Saypol: May I just interrupt you for a moment. If the defendants do not object, I shall expect the witness to name the individuals who attended. Sometimes there is an objection and in that event I thought I should caution in advance, and suggest that initials alone be given unless I deem it appropriate to bring out the names.

Mr. E. H. Bloch: I am very glad Mr. Saypol was kind enough to state that to the Court. I would object.

Mr. Saypol: All right. I can do it that way, then. That is why I offered to do it that way to avoid any objection.

Q. Do you remember the initials of anybody who was present at these group meetings?

A. Well, over this period I only recall two. One was——

Mr. Phillips: Initials are just as objectionable as the person's name.

The Court: I beg your pardon?

Mr. Phillips: I object to any initials because the purpose of giving these initials is to identify the people. Otherwise there is not reason for initials.

[fol. 307] The Court: Do you want the names identified?

Mr. Phillips: No. The names have been excluded. I say initials——

The Court: The names have not been excluded. Both counsel have agreed that they won't do it.

Mr. Phillips: Well, both counsel have agreed. Now I think we should as well agree that initials, though not as grave as names, do carry the import of identity.

The Court: Yes. Now, what is the objection as far as your client is concerned?

Mr. Phillips: I object to initials.

The Court: On the ground that it is prejudicial? Do you claim that?

Mr. Phillips: On the ground that those initials may prove prejudicial.

Mr. Saypol: Maybe Mr. Phillips wants only one initial. Would that help you?

Mr. Phillips: Unless the initial is the inital of one of the defendants. Any other people outside of these defendants are not properly charged here with anything, and the only purpose I can see in anybody's mind for introducing their names or identity by means of one or two initials is certainly——

The Court: Mr. Saypol, is there some relevancy to this?

[fol. 308] Mr. Saypol: I am trying to show what transpired at these meetings. I am trying to show what this witness knows about it. I am trying to establish the form and substance, memory and recollection. I want to show that this witness has a clear recollection of what transpired.

The Court: Go ahead.

Mr. Saypol: In proceeding this way I am providing a fertile field for cross examination.

The Court: Go ahead.

Mr. E. H. Bloch: Just a second. If the purpose of this question is to refresh the recollection of the witness, then I submit——

The Court: He didn't say that, Mr. Bloch.

Mr. E. H. Bloch: I thought he said something about recollection.

The Court: No. He said one of the purposes was to show that this witness had a pretty good recollection of everything that had transpired at these meetings.

Mr. E. H. Bloch: There is no question that has been raised to the——

Mr. Saypol: May I substitute the word knowledge?

The Court: I think he has the right to establish it for the satisfaction of the jury. The jury ultimately will pass upon the question of whether or not this man is telling a credible story, whether his recollection is good, and he [fol. 309] wants to establish some of the surrounding facts.

Mr. E. H. Bloch: I think that is true as a general proposition. I am trying to apply it concretely to the specific question. Nobody has raised any question as yet about his recollection.

The Court: But you will raise the question that he is not a credible witness.

Mr. E. H. Bloch: Well, I think that is proper on redirect for Mr. Saypol to try to buttress the credibility of the witness.

The Court: Well, what difference does it make? You will attempt to destroy his credibility.

Mr. E. H. Bloch: I definitely will.

The Court: Well, go ahead.

Mr. Saypol: I will show that he knows what he is talking about. How about the issue of these initials? Will I use one or two or the full name?

The Court: I think you had better use initials. If he is going to go into this subject would you prefer to have initials rather than the full name?

Mr. Phillips: Maybe the initials J. S. somebody will take as Joseph Stalin.

The Court: Well, if the initials are J. S., you will stipulate that it wasn't Josef Stalin. Proceed. Would you [fol. 310] rather have the full name? Is that what you want?

Mr. Phillips: I would rather have neither names nor initials.

The Court: Now if there are going to be initials, I have

ruled that there will be initials, would you rather have the name or the initials?

Mr. Phillips: If your Honor please, I would rather have the initials but that doesn't lessen my objection.

The Court: Very well. I understand.

Mr. Phillips: In other words, I am choosing the lesser of the two evils.

Mr. Saypol: Doesn't this amount to a statement by Mr. Phillips that he would rather not have the testimony?

The Court: Well, let us not comment on it.

Q. You say you recall two persons at least, who attended these meetings?

A. That is correct.

Q. Do you recall the initials of one of them?

A. Yes.

Q. Will you give them to us?

A. S. S.

Q. Was S. S. in the employ of the Government of the United States, do you know?

A. Yes.

Q. Where?

A. I believe it is the Civil Service Commission.

[fol. 311] Q. Do you remember the other?

A. I recall one other initial, S. M.

Q. In the employ of the Government?

A. I only believe that there was employment in the Government, yes.

Q. Do you know what branch?

A. No.

Q. After Sobell left what happened to you in connection with the membership in that Communist group?

A. Well, there was a change of personnel but I continued as a member of the Communist Party.

Q. Until when?

A. Until 1948.

Q. Did there come some sort of change in the identity or in the definition of the members of those groups after 1942? Were they allocated to respective branches of the Government?

A. Yes. About that time the members of the individual

groups were made up mainly of employees of a particular agency.

Q. What denomination was applied to the group which you were a member of?

A. Navy branch.

Q. Navy branch? Was the word 'cell' used at that time?

A. I don't believe so.

Q. Do you remember how many constituted that branch?

A. Well, it varied. It started with two.

Q. Approximately?

A. About seven or eight. Eight, possibly. I haven't added them up at one time.

[fol. 312] Q. Do you remember the initials of some of the members of that group.

A. Yes.

Mr. Kuntz: If your Honor please, I think I gathered from the witness's answer that he is now referring to after, he testified, Sobell left. So obviously, if that is the case, obviously this testimony would be wholly irrelevant.

The Court: Yes. I will sustain the objection.

Q. Now, between 1941 and 1944, did you have occasion to see Sobell?

A. Yes. Sobell visited Washington on about two occasions.

Q. Did you see him and talk with him?

A. Yes.

Q. Then you have told us there finally came a time in 1944 when you had this meeting with Rosenberg at 246 Delaware Avenue?

A. Yes.

Q. Now do you remember in point of time any significant date related to that meeting?

A. Yes. It was a short time after D Day.

Q. And it was that night that you received a telephone call from one Julius Rosenberg?

A. Yes.

Q. In that conversation he said he wanted to talk with you?

A. Yes.

Q. Did you associate him at that time as a former colleague at City College?

A. Yes.

Q. I take it that was the basis upon which you agreed [fol. 313] to see him and invited him there?

A. Yes, that is right.

The Court: You hadn't seen him since your City College days?

The Witness: That is correct.

Q. Did he finally come to your home?

A. Yes.

Q. When did he arrive, do you remember?

A. It was in the evening. It was after supper. After we had our supper.

Q. I think you told us he first spoke with you together with your wife?

A. That is right.

Q. And thereafter he spoke to you alone?

A. Yes.

Q. Was it at his request that this conversation was carried on with you privately or just a coincidence?

Mr. E. H. Bloch: If the Court please, I not only object to the form of the question but I object to it on the ground that it has already been asked and answered.

The Court: Yes, that was answered. He said he had asked his wife to leave the room. Rosenberg had asked whether or not Mr. Elitcher's wife would leave the room and she did leave the room.

Mr. Saypol: Is the reference now to the prior testimony at the outset of the examination or immediately prior to this? I want to go into it in some more detail.

The Court: All right. Go ahead. That particular ques- [fol. 314] tion Mr. Bloch said had been answered, and it was answered.

Q. Will you continue to tell us after you started the talking with Rosenberg alone what you said and what he said?

Mr. E. H. Bloch: I object upon the ground that it has already been asked and answered.

The Court: Is that a new field?

Mr. Saypol: There will be additional details brought out to those that I initially developed. I can try to be precise

and segregate, although I think with continuity no harm can be done in having the witness tell his narrative.

The Court: Well, maybe we can save some time.

By the Court:

Q. Do I understand Mr. Rosenberg then asked you what type of work you were doing in the Navy and told you that Russia needs help, and asked you to turn over any blueprints which could help, is that correct?

A. Yes.

Q. And if there were any film involved that he would have it taken care of in the proper container and all this material could be returned before the next morning so there wouldn't be anything about it?

A. Yes.

The Court: Go on from there.

[fol. 315] By Mr. Saypol:

Q. Was anything said—well, all right, suppose you supply it, Mr. Elitcher?

A. Well, in the process of convincing me of the perhaps need or the safety of these deeds, he told me that Sobell, who had been my former roommate was also——

Mr. Phillips: Just a minute. I object to any conversation about Sobell in the absence of Sobell.

The Court: Let us understand this right now; in a conspiracy after it has been established that the conspiracy exists, conversations by one conspirator are binding on the other conspirator even though not in his presence. Your objection is that no conspiracy has been shown?

Mr. Phillips: Precisely.

The Court: The Government can't prove its entire case in one hour.

Mr. Phillips: But they must first prove the thing they must prove first.

The Court: They can't prove their entire case in one hour. Your objection is overruled. It is taken subject to proof that a conspiracy exists.

Mr. Phillips: Exception.

Q. Did Rosenberg say anything to you at that time about the fact that others were getting similar military informa-

[fol. 316] tion?

A. Yes. Well, he had said that other people were——

Mr. E. H. Bloch: I am going to ask Mr. Saypol please not to ask leading and suggestive questions.

The Court: Try not to lead on this subject, Mr. Saypol.

Mr. Saypol: Of course I won't, but sometimes——

The Court: Sometimes you can address the witness's attention to a particular subject, like you have him now in a conversation in June, 1944. Will you exhaust his memory on that?

(Last question read and answer.)

The Court: Complete your answer.

The Witness: Were also helping in this matter.

Q. Did he tell you any more about the way in which they were helping?

A. No, he did not.

Q. Now, it was immediately preceding this last answer you gave that you answered my question regarding the fact that others were supplying similar military information to Rosenberg.

A. Yes.

Mr. E. H. Bloch: I object to the form of the question. I object on the additional ground that it presupposes a state of facts not proved.

The Court: Well, he asked whether it was the fact.

[fol. 317] Mr. Saypol: That was on the record. That is what I intended to have read.

The Court: I thought it would shorten it, but he wants——

Q. What did Rosenberg say to you about that?

A. Well, he had said there were others contributing. No other names were mentioned, but there were others contributing in this way.

By the Court:

Q. In what way?

A. In this way, in giving information to him, giving to Rosenberg.

Q. What information?

A. Military information.

By Mr. Saypol:

Q. For what purpose?

A. For the purpose of transference to the Soviet Union.

Q. Was it at that time that he then mentioned that Sobell was helping in this way?

A. Yes.

Q. In the course of the conversation was anything said about other individuals besides yourself?

A. No, no other names were mentioned.

Q. I am talking generally.

A. Yes.

Q. Was anything said about getting others?

A. Yes. He was interested——

Mr. E. H. Bloch: I object to it on the ground the question has already been asked and answered, and I think it is [fol. 318] unfair to stress something of this kind.

The Court: It has been asked and answered.

Mr. Saypol: I know it has but I am trying to maintain the continuity. I can't pick these things apart.

Q. What was said finally with respect to the course you should pursue if you had any information to supply?

Mr. E. H. Bloch: Again I object to it on the ground the question has been asked and answered.

The Court: That is correct. Unless there is something else. I understand he was to turn it over to him and he would have it photostated or do whatever was necessary and return it by the morning so it would not be missed.

Q. Did he tell you where you should take your information in order to get it to him?

A. Yes.

Mr. E. H. Bloch: I object to the question upon the ground——

The Court: That is overruled. Go ahead.

A. Yes. He said that his name was listed in the Manhattan directory and I could find it there. I believe he also gave me his address, but he said I could find his name in the Manhattan directory.

Q. Did he say anything about the ultimate destination of the material which would be supplied?

Mr. E. H. Bloch: I object to the question upon the ground [fol. 319] that it has been asked and answered.

The Court: I will permit this to be answered.

A. Other than that it would go to Russia, there was nothing else mentioned.

Q. Did he describe to you the type of material that he was interested in getting?

A. Well, yes. The interest was mainly for plans or reports or books regarding military equipment, new military equipment, anything that I might think could be of any value, of any assistance to the Soviet Union.

Q. Did that terminate the meeting that night?

A. Yes.

Q. Now, after that when did you see Rosenberg next?

A. Well, later that summer, my wife and I took a trip to New York. Rosenberg had previously said if we were in New York to call him, we might have dinner or we might meet other classmates. So we did call him and he arranged a meeting with other classmates for dinner.

Q. Did you have dinner with him that night?

A. Yes.

Q. How many people were present at that dinner?

A. About five others.

Q. Was that a public restaurant?

A. Yes.

Q. Were others present besides the defendant?

A. Yes.

[fol. 320] Q. I take it then that there was no discussion concerning this subject that you have testified to?

A. That is correct.

Q. After that do you recall seeing Sobell and his wife?

A. Yes.

Q. By that time Sobell had been married?

A. No, I don't believe so.

Q. Where did you see him and when?

A. Well, we went on a vacation to Kumbabrow State Park in West Virginia.

The Court: When?

The Witness: The week preceding Labor Day, 1944.

Q. Did you stay at that camp or state park, you and your wife and Sobell and his wife?

A. Yes.
Q. For how long?
A. One week.
Q. While you were there did you have any conversation with Sobell regarding the prior conversation that you testified to with Rosenberg?
A. Yes.
Q. That is the one on D Day?
A. Yes.
Q. What was said? Before you say that, who was present? Did the women hear this conversation? Were they present?
A. No.
Q. Just you and Sobell?
A. That is correct.
Q. What was said?
A. I told him that—well, I had wanted to tell him so that I could be sure of my position. So I said to him that Julius Rosenberg had visited me some time ago, a short time ago [fol. 321] at my home, and had asked me whether I would contribute military information to Russia, and in the course of that he had said you, Sobell, were also helping in this. At this point he became very angry and said "he should not have mentioned my name." "He should not have told you that." I tried to explain that Rosenberg knew of our close relationship, and you probably knew that he had seen me. So he probably felt safe about it. He said—he was still angry and said, "it makes no difference, he shouldn't have done it."
Q. Now I have referred to the woman who is now Sobell's wife as his wife; at that time they weren't married?
A. That is correct.
Q. Subsequently did you attend their wedding in March 1945?
A. Yes.
Q. Where did the wedding take place?
A. In Virginia.
Q. When did you see Rosenberg next?
A. In the summer of 1945.
The Court: When did you say they were married?
The Witness: In March, 1945.
Q. You say you saw Rosenberg in the summer of 1945?

A. That is correct.

Q. Where did you see him?

A. At his home.

[fol. 322] Q. What were the circumstances of your visit?

A. Well, my wife and I had again taken a vacation of a few days and we were staying in New York. We first stayed at my mother's house. My wife was dissatisfied and we were looking for another place to stay. We had called Rosenberg——

Q. We or you?

A. I called, through common discussion about it; I called Rosenberg. In the course of our talk he suggested that we could stay at his place; his wife was in the country, and so we could use his apartment.

Q. Where was that apartment?

A. Knickerbocker Village.

Q. Did you stay there?

A. Yes.

Q. Did you have a talk with him that night?

A. Yes.

Q. What was discussed between you?

The Court: Just the two or you or your wife?

The Witness: It was part with my wife and part on the side.

Q. What conversation took place in your wife's presence and then tell us about that which took place between you alone?

A. Well, one of the things we talked about related to this; he apparently—well, I don't know the exact circumstances, but he was either up for dismissal from his job or had been [fol. 323] dismissed from his job for security reasons.

Mr. E. H. Bloch: I object to this unless Rosenberg said it. I don't want this witness's idea.

The Court: Yes.

By the Court:

Q. Before you tell us that, where was he working?

A. He was an inspector for, I think, the Army or Air Force at some place that was making electrical equipment for them.

Q. Tell us what Rosenberg told you. Did he tell you he was up for dismissal?

A. Yes. I don't know whether he was up for dismissal or had been dismissed, but his case was current.

By Mr. Saypol:

Q. You say he was working for some firm doing military work for the Air Force?

A. Well, it was military work and I believe he was a Government inspector rather than working for the firm.

Q. You say you don't remember whether he told you he had left or been discharged or whether he was up for discharge?

A. That is correct.

Q. But he did say for security reasons?

A. That is correct.

Q. What else was said?

A. He talked about the case. The union with which [fol. 324] he was affiliated was fighting it with him.

Q. Did he have some documentary material with him?

A. Yes. He had some paper, some sort of brief regarding the case.

Q. Did he read it to you?

A. He read some brief pieces from it.

Q. What do you recall what he read to you?

Mr. E. H. Bloch: If the Court please, I object to any conversation between this witness and the defendant Julius Rosenberg with respect to any subject matter not related to the issues in this case, and I urge that any subject matter concerning Rosenberg's employment or possible dismissal from employment in the Federal Government is not related to the issues in this case, and it only serves to prejudice at this time. I don't know what is going to come up.

Mr. Saypol: Well, the proof will come out.

The Court: The objection is a good one, that nothing should be admitted that is not related to the case.

Mr. E. H. Bloch: Correct.

The Court: But Mr. Saypol says that it is related to the case and I must accept his word for it, and if it ultimately appears that it is not, I shall strike it.

Mr. E. H. Bloch: I agree with your Honor with this [fol. 325] exception. We already know what the subject matter that was discussed between Rosenberg and this witness was. He has already stated it. What I am objecting to is going into that matter.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Now, do you recall what the substance of those lines was that he read to you from that document?

A. Well it had to do with——

Mr. E. H. Bloch: My objection stays, your Honor?

The Court: Overruled.

Mr. E. H. Bloch: And if there is going to be any question of a document, I also object on the secondary evidence rule.

The Court: Overruled.

Mr. E. H. Bloch: I am sorry, the best evidence rule.

The Witness: Well, it had something to do with some statement that had been presented regarding membership in the party, the Communist Party or party activities, and I don't recall the complete substance of it.

The Court: Was there any comment by him after he read it to you?

The Witness: Yes. That is what is to come up.

The Court: Are you coming to that now?

[fol. 326] The Witness: Yes.

Q. At that time do you remember——

Mr. Phillips: The witness is inaudible again, your Honor.

Mr. Saypol: After the close of the recess I mentioned it. I am sure everybody heard it. I asked some of the spectators in the rear of the room. They said at times they can hear the witness better than I.

Mr. Phillips: I don't think it is a problem here whether the spectators hear it.

The Court: I don't need any argument on this really, gentlemen.

Mr. Phillips: I don't think it is proper for Mr. Saypol to discuss these things with spectators.

The Court: Oh, listen, you are going to be here a long time. Just relax. Go ahead.

Q. About that time was the conversation carried on with you alone or with your wife?

A. Well, there wasn't a continuation of the conversation. He just called me aside and made this remark to me.

Q. Now, did he say anything to you about the basis for the charges against him, the actual basis and what he thought had been the basis.

A. Yes.

Mr. E. H. Bloch: I object to that as completely incompetent and immaterial.

[fol. 327] The Court: Overruled.

Q. What did he say to you?

A. He said he had been worried for quite some time, for weeks about this case, because he thought it had to do with this espionage activity, but he was quite relieved to find out it only had to do with the party activity. So he was relieved.

Q. Did he say anything about you?

A. I don't recall anything.

Q. Did he invite you to come to see him again?

A. Yes.

Q. When did you see him next? Do you recall a telephone conversation with him one Saturday morning?

A. Oh, yes.

Mr. E. H. Bloch: Again I must object to the question as leading and suggestive.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. He called me again in September of 1945.

Q. Did he tell you where he was?

A. Yes. He was at the station, at Union Station in Washington. He had come into the city and said he wanted to speak to me.

Q. Did you see him?

A. Yes. He came over to the house.

Q. How long was he with you that morning, do you remember?

A. A short time. About fifteen or twenty minutes.

[fol. 328] Q. What did he say?

A. Well, the war was over and he was saying that even

though the war was over there was a continuing need for new military information for Russia, and again was trying to get my views about it, whether I would want to contribute in the future.

Q. You mean continue in giving help?

Mr. E. H. Bloch: I object to any phrase of Mr. Saypol with respect to what the witness has said.

(Last answer read at the request of the Court.)

The Court: I think that is sufficient. Have you completed your answer?

The Witness: Yes.

The Court: What did you say to him?

The Witness: I said I would see and if I had anything and I wanted to give it to him, I would let him know.

Q. Was there any discussion between you regarding the type of work you were engaged in at that time in the Bureau of Ordinance in the Navy Department?

A. Yes. He was asking whether—what I was doing. This was quite some time later after the past visit, and he was inquiring about it.

Q. What did you tell him what you were working on at the time? What did you tell him?

A. Well, I told him that I was working on some sonar [fol. 329] or anti-submarine fire control devices.

Q. Will you tell us what that was? Describe it a little more.

A. Well, a fire control device being used for firing missiles against a target. These were particular ones which computed for missiles to be fired against submarines.

Q. In connection with your work I think you have told us you had occasion to visit different war plants throughout the country?

A. Yes.

Q. That is for the Navy Department?

A. Yes.

Q. Were there occasions when you visited the General Electric plant in Schenectady, New York?

A. Yes.

Q. Was any such work in progress there?

A. Yes.

Q. Did there come a time when Sobell was employed in that plant?

A. Yes.

Q. Were there occasions on your visit to Schenectady that you saw Sobell?

A. Yes.

Q. Do you recall an occasion in 1946 on one of these trips when you stayed overnight with Sobell at his home?

A. Yes.

The Court: What year is this?

Mr. Saypol: 1946.

Q. What part of 1946 was that, do you remember?

[fol. 330] A. It would be the early part of 1946.

Q. Was there a discussion brought up by Sobell regarding the military work or classified work or anything like that that you were working on?

A. Yes.

Q. What was the conversation between you?

A. Well, we talked about our work, about what I was doing and what he was doing, and he inquired about some—as to whether there were pamphlets written.

Q. Well, just a moment, before you get to that. What kind of work did you tell him you were doing?

A. Well, I was working—I was project engineer on a fire control system, and I was in charge of that development work.

Q. Then what did he say? After you discussed with him the details of the work you say there was something said about some pamphlets or pamphlet?

A. Well, he inquired as to whether there were any reports written about this system on which I was working.

Q. In other words, he inquired about written material as distinguished from the oral talk that took place between you?

A. Yes.

Mr. Phillips: I object to Mr. Saypol's speech about that. He said in other words. The witness didn't say that. Mr. Saypol says it. It is leading, suggestive and improper.

[fol. 331] The Court: That is the way you should have made the objection without your speech.

Mr. Phillips: I jumped up as soon as I could.
The Court: But you made a speech and you objected to Mr. Saypol's speech.
Mr. Phillips: Oh, all right.
The Court: Overruled.
Mr. Phillips: Exception.

Q. What did you tell him with regard to this written material?
A. I said there were some reports written on various phases of the equipment.
Q. Did you say anything else about it?
A. He asked if I could get any of these reports and I said they were isolated ones and had little importance.
Q. These reports that he was talking about and that you were talking about, were these likewise classified?
A. Yes.
Q. That is, they were not available for public distribution?
A. That is correct.
Q. They were military secrets?

Mr. E. H. Bloch: I object to the question.
Mr. Phillips: I object to him asking the witness to conclude that they were military secrets.

Q. Were they military secrets?

Mr. Phillips: He said they were classified and not open [fol. 332] to the public. That is as far as we know.

By the Court:

Q. As far as you know were they military secrets?
A. Yes.

Mr. Phillips: I object to the form of that question, and I except.
The Court: Overruled. And in what fashion were they classified?
The Witness: Confidential.

By Mr. Saypol:

Q. Was there any further discussion about the written material?

A. Yes. He asked me whether there was an ordinance pamphlet written about this material, an ordinance pamphlet being an overall description of the system.

Q. What did you tell him?

A. I said no, there was not. There was one being written by G. E. and would be finished—it was due to be finished some time the end of the year.

Q. Did he ask you whether you would get one for him or get some for him?

Mr. Phillips: I object again to asking this witness, trying to put the words into his mouth.

The Court: Can't we get this story from the witness in continuous fashion without this punctuation by an additional question?

[fol. 333] By the Court:

Q. Can't you tell us or don't you remember? Can you tell us what you said to him and what he said to you about it?

A. Yes.

Q. Why don't you tell us the whole story?

Mr. Saypol: Well, if we didn't have these frequent interruptions I think we could get it. The interruptions tend to distract the witness and I have to pursue it seriatim.

Mr. Phillips: May I suggest that the interruptions are occasioned by Mr. Saypol's improper questions.

The Court: May I suggest that we have no further argument. Go ahead.

The Witness: Well, on this occasion he asked me whether these were any reports written about the equipment, and I said yes, there were some. He asked if I could get these reports for him. I said no—I said yes but that they were very unimportant, they were isolated. They dealt with specific problems. He then asked whether there was an ordinance pamphlet written and I said no there wasn't, but one was due to be completed at the end of the year approximately, scheduled for completion then, and he was interested in seeing or knowing about the completion of this report.

Q. Do you know what type of work he was doing at the [fol. 334] General Electric plant at that time?

A. Yes.

Q. What was he working on? Tell us.

A. Well, he was working mainly on Servo mechanisms relating to military work.

Q. Can you tell us anything more about that? Servo mechanisms?

A. Well, they are devices which are part of the systems, which are used to control, to drive equipment, to take intelligence and to use it in any way that it is necessary for these computations that are made. Generally you might say it is equipment which takes intelligence information and reproduces it mechanically or electrically and perhaps in other forms so it can be used.

Q. Do you know whether that was classified information?

A. I believe it was, yes.

Q. When did you see Sobell again?

A. Well, I saw him again later that year at his home in Schenectady.

Q. Was that in connection with one of your official trips?

A. Yes.

Q. Did you have any conversation with him about these pamphlets?

A. Well, we had a discussion about our work, talking about what we were doing. In addition he asked me about the status of this pamphlet which I had previously mentioned. I told him it was not completed, it was dragging along, it had not been finished yet.

[fol. 335] Q. Was there any further discussion?

A. Yes. There was a suggestion made to me to visit——

Q. By him?

A. By him, to see Rosenberg. I had not seen him and the suggestion was made, and I said I would do so at some future opportunity.

Q. Did he state to you the purpose for which you should see him?

Mr. Phillips: Just a minute. That is open to the same objection I made before.

The Court: I will overrule it.

Mr. Phillips: Exception.

A. Well, he said, I don't know in what words, or implied that it had to do with this espionage business, but I don't recall the exact nature of the words.

Mr. Phillips: I move to strike out the answer as a conclusion of the witness. He spoke of something being implied.

The Court: Well, I want to say this right now so that we have no further difficulty on this business of conclusions. I suggest that you read the most recent holding by the Court of Appeals for this circuit in United States v. Petrone, decided November 20, 1950. I don't know what the official citation is. You will find that the latest pronouncement by the Court of Appeals on this business of conclusions. In effect they tell the district court not to adhere [fol. 335a] to the old form of law book teaching on the matter of taking of evidence, that a conclusion should necessarily be excluded; the important thing, the important function of the district court is to attempt to elicit the truth from the witness, and whatever form, in effect they say, the district court determines would best elicit the truth, with the exception of the old hearsay doctrine which is still adhered to, that is the form which the testimony should take.

[fol. 336] Now, I will, in my good judgment, at times sustain objection to exclusions, and at other times I will overrule them, in my good judgment.

Mr. Phillips: The point of my objection is to the use of the words "the conversation implied something." That is certainly objectionable.

The Court: That means an impression that he got. That is what a conclusion is, a man gets an impression of something.

Mr. Phillips: And the latest ruling is that a witness's impressions may be stated in that form?

The Court: Under certain circumstances, for the purpose of eliciting the truth.

Am I stating the law correctly as you understand it, Mr. Saypol and Mr. Cohn.

Mr. Cohn: No doubt about it.

Mr. Saypol: Mr. Cohn tried the case; he argued the case.

Mr. Cohn: No doubt about it. The Court of Appeals specifically held that an impression of a witness is competent, and in fact suggested it was error on the part of the District Court——

The Court: So to exclude an impression.

Mr. Cohn: The specific question, very briefly, in that case was, an FBI agent was asked his impression of whether [fol. 337] or not a counterfeiter knew that counterfeit money was in his house and was under his control, and the Court of Appeals held it was error not to permit the FBI agent to give his impression of whether the defendant knew at the time.

The Court: That is correct.

Mr. Phillips: I don't think it is quite analogous for a man saying something was implied.

The Court: The doctrine which they enunciate there is that the District Court should not be rigid in repeating and adhering to the old law school type of teaching, that all conclusions are not admissible, and I happen to think the Court of Appeals is absolutely right, for whatever that is worth.

Mr. Phillips: May I submit that this——

The Court: I think that this is an easier form and a better form to elicit from a witness the truth, without going to a lot of unnecessary motions.

Mr. Saypol: After all, aren't we getting at the truth here, by trying to get impressions from the witness?

The Court: Proceed.

Mr. E. H. Bloch: I object to any statements at all.

The Court: I will sustain your objection to Mr. Saypol's [fol. 338] comments.

Disregard Mr. Saypol's comments.

Mr. Phillips: What is the ruling on my objection?

The Court: The ruling on your objection is that it is overruled.

Mr. Phillips: Exception.

Mr. Saypol: Now, we got lost in the middle again. Will you reread the last question and answer, please?

(Last question and answer read.)

By Mr. Saypol:

Q. That took place in the early part of 1946 or in 1946 sometime?

A. Yes.

Q. Thereafter did you see Rosenberg?

A. Yes, I did.

Q. That was after the discussion with Sobell?

A. Yes.

Q. In which Sobell suggested that you see him?

A. Yes.

Q. Where did you see him, do you remember?

A. Did you say where or when?

Q. Where?

A. At the home of Rosenberg.

Q. What did you say to him and what did he say to you?

A. Well, I called him and said—well, I was in the city [fol. 339] on some official business, I believe—I called him and told him I would like to see him, and he said to come over. When I went up there——

The Court: When was this, did you say?

The Witness: I am sorry?

The Court: When was this?

The Witness: Either the end of '46 and possibly '47, the date I don't know.

The Court: All right.

A. (Continuing) I told him about what I was——

Q. Let me interrupt you for one minute. At the outset of the conversation was anything said about the fact that you had talked to Sobell?

A. Yes, I told him I had.

Mr. E. H. Bloch: Now, if the Court please, I think that there ought not to be any leading or suggestive questions on this.

The Court: I agree.

Mr. E. H. Bloch: I agree with the Court, he ought to be asked concerning the conversation.

The Court: That is right; and he should tell us the conversation, and then if he has left out something which you consider important, then I will permit you to jog his memory, but I do wish this witness would tell us his story.

[fol. 340] Q. Will you then tell us, Mr. Elitcher, after your conversation with Sobell, about your visit with Mr. Rosenberg and what you said and what he said?

A. When I came there I told him that I seen Sobell, but he had suggested seeing him. I told him about my new work—I was perhaps in a more receptive frame of mind for him—and he then interrupted and told me that they were having some difficulty, felt that there was a leak in this espionage, and because of that there were precautions being taken by him. He told me it would be best if I don't see him, if I don't visit him, that I don't come to see him until he lets me know or until someone informs me. Otherwise—I think that was the substance of the conversation.

Q. Do you remember whether anything was said about what should be done by you in regard to any of your outside activities?

A. Yes. I was told by him that it would be best if I discontinued my union activities and party activities.

Q. You mean Communist Party activities?

A. Yes.

Mr. E. H. Bloch: Now, I object to that. There is no suggestion, there is no such suggestion in the witness' testimony, and here again it is leading.

The Court: Overruled.

Mr. E. H. Bloch: I except.

[fol. 341] The Court: I think that is a matter that will go to the credibility of the witness. I have got to take it.

Mr. E. H. Bloch: I understand, your Honor, but if you will remember this witness' testimony, he hasn't said one word about Rosenberg's Communist Party affiliations or activities. They were exclusively those of Sobell. Now, for the first time, Mr. Saypol interjects "Communist Party activities." I don't know what this witness meant, but I would like to get his testimony.

The Court: Let us have no argument. I am sure that Mr. Saypol isn't interjecting anything that this witness hasn't told him on a previous occasion.

Mr. E. H. Bloch: I am convinced of that.

Mr. Saypol: I take it that when this witness refers to "party activities" he is not talking about a May party or

a political party, other than the party to which he is testifying.

The Court: Will you disregard that, please; continue, Mr. Saypol.

By Mr. Saypol:

Q. Do you know whether there came a time in 1947——

The Court: Well now, wait. I am a little confused now on this story. Do I understand that the story ends this meeting with Rosenberg, in the early part of 1946, when [fol. 342] he tells you that he doesn't want you to do anything in connection with him and that you will hear from him further?

The Witness: Yes, that was late '46.

The Court: Late '46.

Mr. Saypol: I think the witness said late '46 or early '47.

The Court: That is right, or beginning of 1947, yes.

The Witness: And he added that it would be best if I discontinued any of my union and Communist Party activities, that it would be much safer. I told him I couldn't, that that was what I was doing, that was my life down there and I could not withdraw. He insisted but there were no conclusions resulting from it, and I left .

By Mr. Saypol:

Q. Was anything said by either party in respect to remaining in communication with each other?

A. No.

Q. About that time, where had Sobell been working?

A. At G.E.

Q. Did his employment change then?

A. Well, sometime in 1947 he took a position at the Reeves Instrument Corporation.

Q. That is here in New York City?

A. Yes.

[fol. 343] Q. Do you know what kind of work he did there?

A. Well, there was—it was again work done for the Armed Services; I am sure it was classified. He was in charge of a project at the Reeves Instrument Corporation.

Q. About that time did you see Sobell?

A. Yes.

Q. Did you have a conversation with him?

A. Yes. I met him more than once at Reeves.

Q. Do you recall the occasion when you had lunch with him?

A. Yes.

Q. Where did that luncheon take place?

A. At a sort of eating place on Third Avenue, The Sugar Bowl.

The Court: When?

The Witness: In 1947.

The Court: When?

The Witness: End of 1947. I don't remember the month.

Q. Third Avenue and what street, do you remember?

Q. 99th—no, I am sorry—89th Street.

Q. Was there some conversation then about the type of work that he was on?

A. Well, we did talk about what we were both doing; we always talked about that.

Q. What was it at the time, do you remember?

A. That I was doing or that he?

Q. He was doing.

A. Well, he was working on some plotting, what we call "a plotting board."

[fol. 344] Q. What were you working on?

A. I was still working on this same fire control system.

Q. Any particular phase of it?

A. No, it is the same. I was the project engineer in charge of the whole system.

Q. At this luncheon conversation, what was said?

A. Well, there was this request for names or information about any engineering students that I might know, who were progressive, as I have testified before, and asked whether, if I knew of any such people, would I let him know. I told him I didn't know anybody. However if somebody came along I would tell him about it.

Q. Was there anything said about the method of putting them in touch anybody, whom they were to be put in touch with?

A. No, there was no discussion of that.

Q. About that time, do you recall a conversation with Sobell relating to your wife?

A. Yes.

Q. What was the conversation?

A. Well, at about that time my wife and I were having some personal difficulties and I told it to him.

The Court: Where was this, at the Sugar Bowl?

The Witness: At the Sugar Bowl.

A. (Continuing) He said that—or, he became concerned and asked whether she knew anything about this espionage business. I told him I thought that she might know. How-
[fol. 345] ever, I wasn't sure. He said, "Well, that isn't good"; and I said, "Well, it is just too bad. If she knows, she knows, and I just can't do anything about it."

Q. Then, did there come a time when you went to work for the Reeves Instrument Company, too?

A. Yes.

Q. What was that?

A. In October of 1948.

Q. Where did you take up your residence?

A. At the address I mentioned previously, 164-18 72nd Avenue, Flushing.

Q. Did you and Sobell live near each other at that address?

A. Yes.

Q. In other words, he lived in the same vicinity?

A. Yes, we were back to back, actually.

Q. Do you have occasion to come to work together and go home together?

A. Yes, we rode together in sort of a car pool, two of us, and we alternated driving.

Q. Now, do you recall a conversation with him on one of these occasions, returning home, regarding this subject?

A. Yes. There was a similar request made about people that I might know, except on this occasion there was the statement——

Q. By whom?

A. By Sobell, that because of some increased security measures that had been taken, it would be best to find engineering students, young students, who were not in-
[fol. 346] volved in any progressive activity, so that they would not be suspected, people who might eventually be asked about providing military information. I said I didn't

know anybody—again I didn't know, and I said I had no knowledge.

Q. Now, just coming back for a moment, at the time you first came to work for Reeves or immediately preceding that, did you have any conversation with Sobell about your plans?

A. Yes. I had been informed—well, my plans for leaving the Bureau of Ordinance started some months before I left. I had been telling him about it, telling him that I had been planning to make a change. However, I hadn't made up my mind. However, when I finally did decide to leave, which was about in June of 1948, again on the occasion of a visit to New York on business, I called him and told him that I was planning to leave the Bureau; that I had definitely decided to do so. He said, "Don't do anything before you see me. I want to talk to you about it, and Rosenberg also wants to speak to you about it." He made an appointment for me to meet Rosenberg at 42nd Street and Third Avenue, which I did. This was about 6:30 in the evening. There was a meeting with Rosenberg——

The Court: Speak up.

[fol. 347] Mr. E. H. Bloch: May we have the time fixed, please, your Honor?

The Court: Yes.

The Witness: I think it was in June of 1948, when I decided to leave.

The Court: And is this when you had this conversation with Sobell?

The Witness: Yes.

Mr. Saypol: The conversation with Sobell, if the Court please, I think preceded the appointment that he made. The appointment came out of the conversation with Sobell.

The Court: Yes, I am talking about having this conversation and I am asking whether that was in June of 1948?

The Witness: Yes.

By Mr. Saypol:

Q. Now, did you ultimately meet Rosenberg as a result of Sobell's suggestion?

A. Yes, I met him at this appointed place. Sobell also

came along—I don't believe they came together—and we walked up Third Avenue and some of the side streets and discussed this matter.

Q. What did Rosenberg say to you?

A. Rosenberg asked about my plans to leave.

[fol. 348] The Court: When was this?

The Witness: Same time, this is the same day.

The Court: Oh, the same day.

Q. Yes?

A. Asked about my plans. I told him I had decided to leave Washington. He said that that was too bad; that he was sorry to hear it, because he wanted me to stay there, at the Bureau of Ordinance; he wanted me—he needed somebody to work at the Navy Department for this espionage purpose, and he wanted me to change my mind. He said that he also—he had some plans in his pocket for me to make a contact in Washington to meet somebody, to establish a contact. I told him that I would not, I would not do so, I would not change my plans to leave. My wife and I wanted to leave and we were going to leave. Sobell was along and I recall that he agreed with Rosenberg in his trying to convince me to stay down at the Bureau of Ordinance. However, I convinced him that I was not going to change my plans; I was going to leave Washington. So that ended that part of the conversation. Sobell left and Rosenberg and I had dinner together.

Q. Well, in the course of the conversation among the three of you, when they were trying to convince you that you ought to stay at the Bureau of Ordinance, at the Navy Department in Washington, do you recall any language [fol. 349] of Sobell's to you regarding his view of Rosenberg's pleas to you?

A. Well, only that he said, "Well, Rosenberg is right, Julie is right; you should do that," just some similar remarks concerning it.

Q. Now, after Sobell left, what happened?

A. Rosenberg and I had dinner together at Manny Wolf's, on Third Avenue, and——

Q. What was the conversation in the course of that dinner?

A. Well, among other things, we continued to talk about

this espionage, not relating to my leaving or not leaving. He spoke of—well, he asked whether I knew of places where important military work was done. I mentioned the Bell Telephone Laboratories to him. He was interested in my getting——

Q. Which Bell Laboratories?

A. In Whippany, New Jersey. He was interested in my getting a position there and I said, "We'll see, maybe I can. I don't know." He also told me about the fact that money could be made available for my education, if I so desired, if I wanted to take courses which would improve my technical status. In the course of that conversation I also asked him about how he had started in this venture and he told me that he had a long time ago decided that this was what he wanted to do and he made it his point to get close to people, people in the Communist Party, he said—he didn't specify any person or their positions—[fol. 350] and kept getting close from one person to another, until he was able to approach someone, a Russian—again he didn't specify who or what he was—who would listen to his proposition concerning this matter of getting information to Russia.

Q. Did he say that he finally succeeded in getting to somebody?

A. Yes, he did.

Mr. Saypol: Your Honor, I want to go into a fresh subject. Perhaps your Honor is disposed to take the noon recess.

The Court: All right.

Ladies and gentlemen of the jury, you are excused until 2:20 this afternoon.

The Court will recess until 2:20.

(Recess to 2:20 P.M.)

[fol. 351] Afternoon Session

MAX ELITCHER, resumed the stand.

Direct examination continued.

By Mr. Saypol:

Q. At the time of the luncheon recess I recall you were testifying about the time you came up to New York from Washington and changed your employment. When was that?

A. Well, the time I came up and decided to change my employment was in June of 1948.

Q. Now, there came a time when you drove to New York with your family?

A. That is correct.

Q. When was that?

A. The end of July or the beginning of August. Just about the end of July.

Mr. E. H. Bloch: What year?

The Court: What year?

The Witness: Of 1948. I was coming up to look for a place to live and my family and I drove up to New York. We were going to stay at the home of the Sobells during the search for a home, a permanent home.

Q. Did you come to Sobell's home with your family?

A. Yes, I did.

Q. Did you talk to him? Did you see him there?

A. Yes, I did.

Q. Will you tell us about the conversation?

A. Well——

The Court: This is the end of 1948?

[fol. 352] The Witness: No, June—July of 1948. Well, on the way up——

Q. Just a moment. Excuse me. I think the witness said the end of July or August.

The Witness: Yes.

Q. Go ahead.

A. On the way up to New York, upon leaving Baltimore

we had stopped to buy some dishes and we went off the main road and on coming back I noticed that I was being followed.

Mr. E. H. Bloch: I object to this as not binding on the defendant.

The Court: It will be connected with the defendant in a conversation of some kind.

Mr. Saypol: Yes. I think by this time it is pretty nearly connected.

The Court: You say it will be?

Mr. Saypol: Yes.

The Court: Objection overruled.

Mr. Saypol: I say by this time I think it is pretty nearly connected. He has testified to a conversation with Sobell.

The Court: Not yet. He hasn't told us yet. I assume he will.

The Witness: I continued to notice these cars until I got to New York, and I stopped off briefly at my mother's [fol. 353] house, which is on the way to Queens. I had told my wife as we entered New York——

Mr. Kuntz: We object to that.

The Court: Yes. Don't tell us what you told your wife.

The Witness: I then proceeded on to Sobell's. When I got there, we had one child and we put the child to bed, I called Sobell aside and told him that I thought that I had been followed by one or two cars from Washington to New York. At this point he became very angry and said that I should not have come to the house under those circumstances. I told him that those were my plans. I had intended—I had planned to come to his house to stay; the fact that I was followed couldn't change it; whoever was following me would probably know about it; in any case it was our only destination. He was still angry and concerned. However, he didn't seem to believe that I had been followed. He told me I should leave the house, I should go to a place in the mountains perhaps, or some other place and stay. During the next interval I told him that it was not possible, I didn't know where to go; I just had no—nothing, I could see no other thing to do but to stay.

He finally agreed that I would stay. However, a short time later he came over to me and said he had some valuable

[fol. 354] information in the house, something that he should have given to Julius Rosenberg some time ago and had not done so; it was too valuable to be destroyed and yet too dangerous to keep around. He said he wanted to deliver it to Rosenberg that night. I told him it was foolish under the circumstances; that it was dangerous, it was a silly thing to do. However, he insisted and said that he was tired. He asked me to go along. He said he was tired, and that he might not be able to make the trip back. I agreed to go after argument, and we left the house. Upon leaving I saw him take what I identified then as a 35 millimeter film can.

No reference was made to it. He took it. When we got into the car he put it in the glove compartment. We drove—he drove over to Manhattan along the East Side Drive and he parked outside the Journal American Building. He left the car. He told me to park the car on the street around the corner, which I then noticed was Catherine Slip. He took this can out of the glove compartment and left and I drove up the street and down and parked facing the East River Drive on Catherine Street and waited for him there. He came back approximately a half hour later, or perhaps a little shorter, and as we drove off I turned to him and said, "Well, what does Julie think about this, my being followed?"

[fol. 355] He said "It is all right; don't be concerned about it; it is O.K." He then said Rosenberg had told him that he once talked to Elizabeth Bentley on the phone but he was pretty sure she didn't know who he was and therefore everything was all right. We proceeded back to the house.

Q. Just a moment. At that time was the name Elizabeth Bentley under discussion?

A. Well, it had been in the newspapers just prior to that time, and I knew——

The Court: Excuse me. Would Juror No. 2 like some water?

Juror No. 2: I would.

The Court: Would you give that juror some water, please. All right, proceed.

A. (Continuing:) —had been in the papers and I knew from the mention of the name to whom he was referring. She had been.

Q. Did you know what her activities were?

A. Well, she had just——

Mr. E. H. Bloch: I object to that as incompetent, irrelevant and immaterial, not within the issues of this case.

The Court: I will overrule it. She is going to be a witness [fol. 356] apparently, according to the witness list.

Mr. E. H. Bloch: I don't know what she is going to testify to.

The Court: Neither do I.

Mr. E. H. Bloch: In the present state of the record, it is my contention that these defendants are not bound by any of Miss Bentley's activities.

The Court: I can only take it subject to connection.

Mr. E. H. Bloch: All right. Exception is automatically noted—that is true, your Honor, in the Federal Courts, one doesn't have to take an exception after one makes an objection?

The Court: You don't have to make an exception, but you must make an objection.

Mr. E. H. Bloch: Once the objection is made, the exception is implied in the case of an adverse ruling.

The Court: That is right.

A. (Continuing) I knew from the papers that she had admitted to some—to being a part of an espionage ring, that is all. We drove back—he drove back and we discussed the point no further.

Q. Was there anything about some equipment that you noticed in Sobell's home, that you can tell us about?

A. Well, he had photographic equipment, enlarging; he [fol. 357] had a 35—a Leica camera, and an enlarger and material for processing film.

The Court: Who is this, Sobell?

The Witness: Sobell, yes.

Q. In your experience with Sobell, from your own work and from what you knew about his, is it accurate to say that material that you worked on in the Navy Department, that he worked on in the Navy Department, that he worked

on in General Electric, in Schenectady, and that both of you worked on in Reeves Instrument, was classified?

A. Yes.

Q. When was the last time that you saw Sobell?

A. Well, I believe it was sometime in June of 1950.

Q. Did you have any conversation with him at that time about any plans that he had?

A. Well, the last time I saw him he had said that I—I don't know whether he told me—I know the family was going to visit Washington to bring their daughter to visit Washington, and they left sometime before the week-end, and that is all I know of their plans.

Q. Did he say anything to you at that time about going to Mexico?

A. No.

Q. At that time, where were you living?

A. At this time, 164-18 72nd Avenue.

Q. Do you know where he lived?

A. Yes.

[fol. 358] Q. Where?

A. 164-17 73rd Avenue, which is——

Q. You lived close together?

A. —which is—our back yards abut.

Q. In the time that you worked with Sobell at Reeves Instrument Company, or at any time, did you ever see Sobell take any papers or documents?

A. Well, in the course of his duties, I did, as far as I know, I saw him take—he had a briefcase, and he did take things out of Reeves Instrument. I presume that they had to do with work. We had another installation at Roosevelt Field, Long Island, and he went there quite often, and I know that he did have a briefcase and he took material out, but what it was, or what the material was, I do not know.

Mr. Saypol: You may examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. You are married, Mr. Elitcher?
A. Yes.
The Court: Speak up, please. I can hardly hear you.

Mr. E. H. Bloch: I am sorry.

Q. Are you married?
A. Yes.
Q. Have you any children?
A. Yes.
Q. How old are your children?
A. One is five and the other is 14 months.
Q. Now, when were you married?
A. In May of 1943.
[fol. 359] Q. Where did you marry?
A. In Washington.
Q. What year?
A. 1943.
Q. 1943?
A. Yes.
Q. Now, when you attended CCNY, did you attend the Engineering School?
A. Yes.
Q. And were the classes in that school in one building, in one building alone?
A. The engineering classes were held in one building.
Q. By and large, is it fair to say that most of the student body who took the same courses that you did, looking toward a degree in electrical engineering, concentrated mainly in the engineering building?
A. Yes, sir.
Q. And that building is separate and apart from the other buildings up at CCNY campus, is that true?
A. Yes.
Q. Now, how many students at CCNY, during the course of your college days, did you become friendly with?
A. Well, I became very friendly with few, if any. I knew all the members of the class. I had almost no social relations with them. I think I saw one or two perhaps out-

side of the school, perhaps only on one or two occasions only. I think I knew them all almost equally well, the ones in the electrical engineering, of those going for a degree in electrical engineering, probably the best.

[fol. 360] Q. And some of your classes also contained students who were not in the class in which you were graduated; isn't that correct?

A. Yes.

Q. How many students in all would you say you knew——

Mr. E. H. Bloch: I withdraw that.

Q. How many students in all would you say attended the engineering classes, in the engineering building at CCNY, during the years of your college days?

A. Total number?

Q. Yes.

A. Might have been 150, 200.

Q. That is, in your class alone?

A. Oh, no; I was thinking—yes, about that, in my class of '38.

Q. And together with the other students from the class of 1939 or the class of 1937 or the class of 1940, there were many hundreds of students?

Mr. Saypol: There is no reference to——

Q. Who attended school with you; is that correct?

Mr. Saypol: Did counsel say 1940?

Mr. E. H. Bloch: I said, the class of 1940.

The Witness: Would you repeat the question?

Q. That is a fair statement, isn't it ,there were hundreds of students with whom you attended classes together?

A. Yes.

Q. And to whom you at times spoke?

A. Yes.

Q. And you didn't consider these people your friends; [fol. 361] they were just casual students, who were engaged in common studies with you; is that correct?

A. That is correct.

Q. And, is it not a fact that the defendant Julius Rosenberg came within that type of student, whom you met quite casually during your college days?

A. Yes, sir.

Q. Now, when were you graduated from college?

A. My actual graduation took place in June of 1938.

Q. And up to June of 1938 you were a resident of the City of New York?

A. Yes.

Q. How long after June, 1938, did you depart for Washington, D. C.?

A. I departed in November of that year.

Q. During the period from June, 1938 to September of 1938, were you working in New York?

A. No.

Q. Were you unemployed?

A. Yes.

Q. Were you looking for a job?

A. No.

Q. You mean, you took a voluntary vacation?

A. No, I was going to school.

Q. You were going to school and were you attending classes?

A. At City College.

Q. Was that some kind of a post-graduate course?

A. Yes.

Q. Was Julius Rosenberg in the class or the classes which you attended during the period from June, 1938, [fol. 362] to September, 1938?

A. Would you repeat that again? I am sorry, I didn't get the dates.

Mr. E. H. Bloch: I think the reporter has them.

(Question read by reporter.)

A. I don't recall.

Q. In fact, Julius Rosenberg was merely a vague person in your mind, at least during your college days; isn't that correct?

A Yes.

Q. You never met him socially during your college days, did you?

A. That is correct.

Q. You did not?

A. No.

Q. And you did not meet him socially during the period from June, 1938 to September, 1938, when you took these post graduate courses in CCNY; is that correct?

A. That is correct.

Q. Now then, you left for Washington; is that correct?

A. Yes.

Q. Did you make application to the Federal Government for employment prior to September, 1938, or did you wait until you reached Washington before you made formal application to receive a position with the Federal Government?

A. Well, in June, 1938, I took an examination for the position of junior engineer and I was appointed to that position when I left New York.

Q. Where did you take that examination?

[fol. 363] A. In New York.

Q. Prior to the time that you took that examination, did you fill out a form 57.

A. Yes.

Q. You know what a form 57 is?

A. Yes.

Q. Just for the clarification of the jury, is it not true that that is the form that is required of all Federal employees or prospective Federal employees or persons who seek Federal employment?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And it is rule and regulation and it is a prerequisite that before you get a position with the Federal Government you must fill out a form 57?

A. That is correct.

Mr. Saypol: I don't know whether the witness knows it, but it is an application for Federal employment.

The Witness: I know that.

Mr. E. H. Bloch: That is correct; that is the only purpose of these questions, to clarify what a form 57 means.

Q. Now, in connection with that application, you were required to answer certain questions?

A. Yes.

Q. Is that correct?
A. Yes.
Q. About your background?
A. Yes.
Q. And whether or not you belonged to certain organizations?
A. Well, I don't remember the exact question that was [fol. 364] asked on the Form 57, but it is one of such a nature.
Q. In June 1938 were you a member of the Communist Party?
A. I was not.
Q. At any rate, you filled out that application?
A. Yes.
Q. Now, where were you stationed when you received your original appointment with the Federal Government, in September, 1938?
A. I was here, in New York.
Q. No, after you received your appointment?
A. Where was I stationed?
Q. Yes.
A. In Washington, D. C.
Q. In the District proper?
A. In the District proper.
Q. And could you tell us the specific location of the building at which you worked?
A. It is at 17th and Constitution Avenue, N. W. It is called "The Navy Building."
Q. Is that the main Navy Building?
A. The main Navy Building.
Q. They had no temporary barracks at that time, which sometimes were utilized from time to time by the Government for Federal employees?
A. I don't believe that in 1938 there were such temporary buildings.
Q. How long did you continue working at that location? [fol. 365] A. Until October of 1948.
Q. Always at that same spot.
A. Yes.
Q. Now, have you told the Court and jury about all your meetings with Julius Rosenberg in Washington and New York or any other place?

A. To my knowledge, yes.

Q. You have gone over your story?

A. Yes.

Q. Before you came into this court, have you not?

A. I have told the story, yes.

Q. How many times have you gone over this story with others?

A. With others?

Q. Yes?

A. Well, I have talked to the FBI on many occasions.

Q. How many occasions?

A. I don't know; it is quite frequent.

Q. And when was the first time that you spoke to the FBI?

A. In—it was July of 1950.

Q. Did you speak to the FBI prior to the time that you were subpoenaed as a witness before the grand jury here, sitting in the Southern District of New York?

A. Yes.

Q. Did you go to the FBI voluntarily?

A. Well, no.

Q. Did they come to you?

A. Yes.

Q. They came to you down in Washington?

A. No, that was here.

[fol. 366] Q. I am sorry, in Flushing?

A. No, it was at my place of business.

Q. Do you remember the exact date when representatives of the FBI came to see you at your place of employment?

A. The date, no, I do not.

Q. You don't remember that? That was done recently?

A. Yes.

Q. You do remember, however, precisely when Rosenberg is alleged to have talked to you the first time in Washington?

Q. That you do remember?

A. Yes.

A. Yes.

Q. Now, did you speak to any others besides the FBI about the story that you have recounted here this morning?

A. Yes, in the past week I have talked to the attorney's office.

Q. When you say "the attorney's office," you mean the staff of Mr. Saypol?

A. Yes.

Q. Did you speak to Mr. Saypol?

A. Yes.

Q. Did you go over your story with him?

A. Yes.

Q. He asked you a lot of questions?

A. Yes.

Q. And you gave answers?

A. Yes.

Q. Was there anybody of Mr. Saypol's staff with whom you went over this story?

A. Yes.

Q. Will you name the person or persons with whom [fol. 367] you went over your testimony, in preparing for this trial?

A. Well, I have talked to Mr. Kilsheimer or Kilshermer, and Mr. Cohn.

Q. Two of the gentlemen who are sitting with Mr. Saypol at the front table there?

A. Yes.

Q. Did you go over the story with any other representative of the United States Government, at any time?

A. Yes.

Q. With whom?

A. I have talked with Mr. Lane.

Q. When?

A. Well, this was some time ago.

Q. Well, tell us when.

A. Well, I have talked to him on more than one occasion.

Q. When was the first occasion you talked to him?

A. The first time would be sometime late in 1950. I was talking to the FBI and then I was asked to—well, at the time of the grand jury, I saw him before the grand jury testimony, before I testified before the grand jury, and there was one other occasion, on which he asked me questions about the testimony after that.

Q. Now, in the course of going over the testimony you

were to give at this trial, did you discuss these matters with various members of Mr. Saypol's staff, as well as Mr. Saypol, in this building?

A. Well, I talked to members of Mr. Lane's office. I don't know——

Q. Well, Mr. Lane and Mr. Saypol are, of course, parts [fol. 368] of the same organization, Mr. Saypol being the chief here.

A. Yes, I did.

Q. And only in this building?

A. Well, I talked to the FBI at my home.

Q. No, no, we will come to the FBI. I am just asking about Mr. Saypol and his staff?

A. Yes, in this building.

Q. Always in this building?

A. Yes.

Q. And when you spoke to them were stenographers present?

A. Yes.

Q. On how many occasions?

A. Well, I spoke to Mr. Saypol, on, I believe, three occasions, and prior to that I had spoken to Mr. Kilsheimer. Now, I had also spoken to Mr. Lane prior to that time, about two, possibly three times, which times stenographers were present, and I talked to Mr.—no, I think that was all.

Q. Now, outside of the conversations that you said you had within the last week or so with members of Mr. Saypol's staff, did you have conversations with members of Mr. Saypol's staff prior to hte time that you appeared as a witness before the grand jury?

A. Yes.

Q. Sitting in this District?

A. Yes, I spoke to Mr. Lane.

Q. Do you remember when you testified, if you did——

Mr. Bloch: I withdraw that.

[fol. 369] Q. Did you testify before the grand jury, sitting in this District?

A. Yes.

Q. And do you remember when that was?

A. In August of 1950.

Q. And there was of course a stenographer present at that time?

A. Yes.

Q. Do you remember the attorney representing Mr. Saypol's office who queried you while you were testifying before the grand jury?

A. Yes.

Q. What is his name?

A. Mr. Lane.

Q. Did you make any written statements, either to any members of the FBI, who questioned you, or to Mr. Saypol, or any members of the staff?

A. Yes.

Q. On how many occasions?

A. Three.

The Court: I don't think that is clear. When you say, "Did you make written statements," you mean was a statement taken down in question and answer form, or did he submit a statement in writing?

Mr. E. H. Bloch: I agree with your Honor. I will clarify it.

Q. Did you sign any statement?

A. Yes.

Q. And you put your signature down on statements how many times?

A. Three times.

Q. Tell us the dates when you signed statements for the District Attorney's office or for the FBI.

[fol. 370] A. Well, the date they visited me, they came to see me at Reeves and took me down.

Q. That was in June, 1950?

A. July, I believe it was.

Q. Don't you know whether it was June or July?

A. It was July.

Q. You are sure of that now?

A. Yes.

Q. You are sure it was after the July 4th weekend?

A. Yes.

Q. Was it in the middle of July?

A. I could identify the time.

Q. I would like you to identify the time, please. Just state your recollection.

A. I would say it was the middle of July.

Q. You would say it was the middle of July; do you remember what day of the week it was?

A. I think it was just before the weekend. I believe it was a Thursday.

Q. Are you sure of that?

A. Yes.

Q. Now, the first time that you were queried by the FBI, you say you were queried in the office of your employer?

A. No, here, in this building.

Q. Oh, I see, the FBI came up to your place of employment and invited you to come down to the Federal Building here for questioning; is that correct?

A. That is correct.

[fol. 371] Q. About what time of the day did they come?

A. They came before lunch.

Q. Before 12 o'clock?

A. That is right.

Q. Who were the members of the FBI who came up to your place and asked you to come down for questioning?

A. Mr. Cahill and Mr. O'Brien.

Q. I didn't get the first name?

A. Cahill, C-a-h-i-l-l.

Q. Did you accompany them down to this building?

A. Yes, I did.

[fol. 372] Q. Where did you go when you got here?

A. To the 29th floor.

Q. Was the stenographer present?

A. No.

Q. Were you asked questions by both of these gentlemen?

A. Yes.

Q. Were you asked questions by anybody else?

A. No.

Q. Besides these two FBI representatives?

A. No.

Q. And while you were being asked questions, did these FBI representatives take notes?

A. Well, they didn't take continuous notes; they recorded pieces of the conversation.

Q. They had pieces of paper in front of them?

A. Yes.

Q. And from time to time you would notice that they were writing?

A. Yes.

Q. As you went along with certain aspects of your story; is that right?

A. Yes.

Q. Did you notice what they were writing?

A. No, I did not.

Q. Do you know whether or not what they wrote fairly represented what you said at that time?

Mr. Saypol: I object to that. If the witness said he didn't know what they were writing, how can he answer [fol. 373] that?

The Court: Sustained.

Mr. E. H. Bloch: I will withdraw it.

Q. Now, how long did you stay in that building, when you were—in this building, when you were first brought down for questioning by Mr. Cahill and Mr. O'Brien?

A. I stayed until after lunch, about 2:30, 3 o'clock.

Q. And did they ask you, amongst other things, about your knowledge of Julius Rosenberg?

A. Yes.

Q. Did they ask you whether you knew Morton Sobell?

A. Yes.

Q. Did they go into some detail about your possible connections with these gentlemen?

A. Yes.

Q. How long would you say you were subjected to questioning continuously from these two FBI agents on that day?

A. I would say three to four hours.

Q. Did you tell them substantially the same story that you are telling in court today?

A. Yes, I did.

Q. Did you discuss this case with anybody outside of Government officials?

A. I did not.

Q. Did you ever hire a lawyer to represent you?

A. Yes, I did.

Q. When did you hire him?

A. It was about a week after the first meeting with the [fol. 374] FBI.

Q. Who was the lawyer?

A. Mr. Fabricant.

Q. Herbert Fabricant?

A. That is correct.

Q. Of 401 Broadway?

A. I believe that is the address.

Q. And he is a partner of O. John Rogge?

A. That is correct.

Q. And do you know the other members of the firm?

A. I know a Mr. Goldman.

Q. Robert Goldman?

A. Goldman, Fabricant, Rogge.

Q. Do you know Murray Gordon?

A. Gordon. There were four names.

Q. Does that refresh your recollection as to who the members of that firm are?

A. Yes.

Q. Do you see any of them in court now?

A. There is Mr. Fabricant (pointing).

Mr. E. H. Bloch: Identifying Mr. Fabricant.

Q. Did you see him in court when you came in this morning?

A. I saw him this morning, not in the court, no. I didn't see him in the courtroom here.

Q. Did you see him before you went on the stand?

A. Yes.

Q. Where did you talk to him?

A. In a room outside.

Q. Did you pay the Rogge firm any fee?

A. Yes, I did.

[fol. 375] Q. Were you afraid of anything that you hired a lawyer? Were you afraid of any crime that you may have committed, that you hired a lawyer?

A. Well, I thought this was an important enough——

Mr. Saypol: Just a moment. Lawyers are hired for other purposes besides in connection with crimes.

The Court: Objection overruled. Answer the question.

A. (Continuing) Well, I knew this was an important enough thing, that I might need legal advice. I talked—I engaged the lawyers after I had spoken and given my story to the FBI, and not under his advice.

Q. Your conscience was clear, wasn't it, after you had told the story to the FBI?

A. Yes, it was.

Q. You didn't consider you did anything wrong, did you?

A. I wouldn't say that.

Q. Well, did you do——

Mr. E. H. Bloch: I withdraw that.

Q. Did you pass any information, secret, classified, confidential or otherwise, of the Government of the United States, to the defendant Julius Rosenberg, at any time?

A. I did not.

Q. Well, did you have in your mind what particular crime you may have committed when you went to a lawyer? [fol. 376] A. Well, I know I had discussed a matter concenring the transfer of such material and I knew that that was not legal, it was not a legal matter.

Q. As a matter of fact, from your own story on direct examination, you rejected all overtures on the part of anybody to try to enlist you in stealing information from the Government; isn't that correct?

A. Well, I didn't reject them. I went along. I never turned over material, but I was part of it, I mean, it was part of the—I was part of discussions concerning it until 1948.

Q. Did you at any time tell Rosenberg that you were not interested in turning over any material to him?

A. I did not.

Q. Did you at any time tell him that you would turn over material to him?

A. Well, I said that I might and I didn't say I would not turn over information, I said that I might.

Q. You didn't though?

A. I did not.

Q. And your actions are what you meant to convey to him as speaking louder than your words, isn't that right, during the entire period from 1944 to 1948?

A. My words were speaking — than my actions.

Q. Well, your actions indicated—at least they do now—that you did not turn over any material?

[fol. 377] A. That is correct.

Q. And don't you consider that that was your answer to any overtures that were made to you?

A. I am sorry, but I don't understand the question.

The Court: Neither do I.

Mr. E. H. Bloch: All right, let me clarify it.

Q. You testified that at various times you were asked to turn over certain confidential information?

A. Yes.

Q. And you never did turn over that confidential information, did you?

A. That is correct.

Q. None whatsoever?

A. That is correct.

Q. Now, as the years went by, right from 1944 through 1948, didn't you have in your mind to say to the Rosenbergs, to Mr. Rosenberg or to Mr. Sobell, "Look, I am not giving you any information. Get wise to yourself, I don't want to do it"?

A. I wouldn't say that.

Q. You wouldn't say that?

A. No.

Q. Let me ask you: Did you ever sign a loyalty oath for the Federal Government?

A. I did.

Q. When?

A. I think it was sometime in 1947. I don't remember the time or the time of year.

Q. Do you know what that oath provided?

A. What do you mean, as a penalty or as just——

[fol. 378] Q. No, do you know the contents of the oath you signed and swore to?

A. Not completely, not right now, no.

Q. Did you know it at that time?

A. I know generally what it referred to, but I don't know the specific wording.

Q. In substance?

A. In substance, I know.

Q. What do you think you signed?

A. I signed a statement, saying that I was not or had not been a member of an organization that was dedicated to overthrow of the Government by force and violence. I don't remember whether the statement specifically mentioned the Communist Party or not, but at least it said I was not a member of an organization that believed in the overthrow of the Government by force and violence.

Q. At the time you verified that oath, did you believe that you were lying when you concealed your membership in the Communist Party?

A. Yes, I did.

Q. So you have lied under oath?

A. Yes.

Q. Were you worried about it?

A. Yes.

Q. Were you worried about it in 1946?

A. I think I was always worried about it.

Q. And you were worried about it in 1947?

A. Yes.

Q. And were you worried about it in 1948?

[fol. 379] A. Yes.

Q. Did there come a time when you had intimations that you were under investigation by the Federal Government, concerning your membership in the Communist Party?

A. Well, the only intimation I had actually was that question of my being followed to New York, I do know that. I believe it was my mother who was asked some questions by the FBI. I had no idea whether it was routine or as a result of the loyalty oath, but I did not know of any investigation regarding that matter.

Q. Well, you know, or don't you, that when a Federal employee takes service in the Federal Government he either is investigated before he is appointed or, as in the past years, he is investigated almost immediately upon his employment; do you know that?

A. Yes, immediately or some time later.

Q. And you understood that to be the practice?

A. Yes.

Q. So that when your mother was being queried about you, didn't you have an understanding that the FBI or some other Government agency was inquiring about your political affiliations?

A. No, not necessarily.

Q. It didn't enter your mind?

A. Oh, yes, but it wasn't a conclusion on my part, because I know that many people whom I knew or thought were not members of any such organization were also [fol. 380] investigated, so this, to me, was either routine or connected with that.

Q. Well, didn't you know that only suspects were investigated?

A. I wouldn't say that, no.

Q. You don't believe that to be the case?

A. I don't believe that to be the case.

Q. Did you hear from any of your friends or from anybody outside of your mother that queries were being made about you in 1948?

A. No, I don't recall any such statements.

Q. At any rate, you were fearful, were you not, that the Government might find out that you were a member of the Communist Party?

A. Yes.

Q. And you were also fearful about the oath that you had taken?

A. Yes.

Q. Which was an absolute lie and perjurious; isn't that correct?

A. I knew the oath, yes.

Q. You also knew that you were guilty of perjury, did you not?

A. Well——

Mr. Saypol: It would seem to me that that might follow on some formal procedure. It is not for this witness to answer.

The Court: Well, he can ask him whether he knew. If he doesn't know what perjury is or doesn't know the legal technicalities, he will simply answer it.

[fol. 381] A. (Continuing) Yes, that was what my answer was going to be. I didn't realize it was perjury as such. I knew I was lying under an oath.

Q. Did you follow the Carl Marzani case?
A. I beg your pardon?

The Court: I didn't hear the case.

Mr. Saypol: That is objected to.
Q. Did you follow the Carl Marzani case?

The Court: I will overrule the objection.
Did you follow it?

A. I knew of it. I didn't follow it.
Q. The papers already had printed about the fact that there was a Government employee who was being prosecuted for perjury, for giving false statements to the Government; isn't that right? Did you so understand it?

Mr. Saypol: I object to the question as to form. It is inaccurate.
The Court: I will overrule the objection.
Is that the fact or isn't it the fact?
The Witness: Well, it was something like that.
Mr. Saypol: Just a moment, please. May I press my objection. That is not the fact as a matter of law.
The Court: I overrule your objection. I am going to ask him whether he knows or doesn't know.
[fol. 382] The Witness: I know that the case involved his membership as being a Government employee and being a member of the Communist party.
The Court: But you do not know the details?
The Witness: I do not know the exact details, no, sir.

Q. At any rate, would the publicizing of that case have any bearing upon your fear, which you say you had since 1948, at the time you signed the loyalty oath?
A. No.
Q. Didn't intensify your fear at all?
A. I don't——

The Court: He has answered it. Let's get on.
Mr. E. H. Bloch: I would just like to press him on it, if I may.

The Court: Did it intensify your fear?
The Witness: I don't think so, no.

Q. You don't think it had any effect?
A. It didn't have any intensification.
Q. Were you also aware that the Government of the United States was making more intensive investigations than they had ever made before, concerning the political affiliations of Government employees?
A. Yes.
Q. Did that intensify your fear?
A. Well, actually not. My fears were of that nature and [fol. 383]this didn't intensify it to any greater extent.
Q. Would you say that your fear was a great one?
A. No—that is hard to define.
Q. Was it a little one?
A. I don't know how to define my fear.
Q. You can't evaluate it?

The Court: Did you have a fear?
The Witness: Yes, I knew that I had done this thing and I thought it might be determined by authorities.

Q. As a matter of fact, didn't you leave the Government Service to try to get a job in private industry because you were afraid that you might be prosecuted for perjury, because of the false oath that you gave the Government?
A. Well, that is jumping a step. One of the reasons for leaving was the fact that such and such investigations were being performed and I didn't like the political atmosphere, therefore, in Washington, but it had nothing—I mean, there was no specific thing I knew that more intensive investigations were being carried on, which made it more likely that it would be best that I do leave. That was not the entire reason for my leaving.
Q. But would you say that was one of the substantial reasons, amongst others, for your leaving the Government?
A. I could say, yes.
Q. Now, when you were interrogated by the FBI for the [fol. 384] first time, as you say, in June, 1950, did that fear of prosecution persist in your mind?
A. Yes, I realized what the implications might be.

Q. You felt that the Government had something over you, didn't you?

A. I couldn't tell; I thought, yes perhaps.

Q. But that entered your mind, didn't it?

A. Yes.

Q. And was that one of the considerations which impelled you to tell the story that you told to the FBI men in June, 1950?

Mr. Bloch: July.

Q. July, I beg your pardon. Whenever I referred to June recently in these last two or three minutes, I meant July, 1950?

A. Well, partly yes, I felt that I had this information, I had performed these activities: I didn't know what information the FBI had; I had no idea. However, I felt that I didn't want to fight the case; I didn't feel that it was my duty to. I hadn't approached the FBI in advance, because I felt that there were implications to even my bringing up the subject. However, when they came to me, I, after a short talk, I freely told them of the story, and since I felt that there might be no reason to hide it, as they might know about it anyway, however, I felt that the only course I [fol. 385] could take was to tell the complete story, which I did.

Q. It wasn't out of any sense of patriotism that you told the FBI the story?

A. Well, in a sense, yes.

Q. You just told us that the fear that you had did have something to do with your telling that story?

A. Yes, but I felt——

Q. It was to save your own skin, wasn't it?

A. No, because I didn't know what would happen.

Q. Didn't you want to ingratiate yourself with the FBI and the authorities?

The Court: Wait a minute, wait a minute. You are asking a lot of questions and this witness doesn't get a chance to answer. Let's answer the first question about saving your own skin.

A. No, because I didn't know what would happen to my skin even when I told the story; I had no idea of what would

happen to me the next minute or hours, so why—the question wasn't raised and I knew of nothing I was doing that would save my skin.

Q. Is that the reason you went to Mr. Rogge or Mr. Fabricant?

A. I knew that I would need legal advice. I had already told the story.

Q. Did the representatives of the FBI, at the time they questioned you for the first time in June, 1950, say any-
[fol. 386] thing about the fact—July, 1950—say anything about the fact that you had signed a loyalty oath?

A. I don't recall that specific question.

Q. Would you say that they didn't?

A. No.

Q. They may have?

A. They may have, yes.

Q. Did they say to you that they either knew or suspected that they knew you were a member of the Communist Party?

A. Yes.

Q. Did they say to you, either in specific words or by some suggestion or intimation, that you could be prosecuted for perjuring yourself by giving a false loyalty oath to the Government?

A. No.

Q. You understood, however, did you not, that that was a present danger at the time you were interrogated by these two FBI agents?

A. Yes.

Q. Now, tell us just what these FBI men told you that first time in July, 1950, about what they had on you, as to being a Communist or anything concerning an oath; just that general subject matter?

A. Well, they told me nothing. They did say that they thought they had reliable information to the effect that I was a member of the Communist Party. They also told me they had information to the effect that I had given material for purposes of espionage, but they mentioned nothing
[fol. 387] as to what such information might be, in any way.

Q. Now, when you came down to this Federal Building

with these two FBI men for the first time in July, 1950, did you come down by automobile?

A. Yes.

Q. In the car that was driven by one of the FBI men?

A. Yes.

Q. Just three of you came down?

A. That is correct.

Q. And did you have any conversation with them in the automobile?

A. Regarding this matter?

Q. Regarding the matter that you were going to be questioned about?

A. No, only that I said, "Well, what is this all about?" And they said that it was a very serious matter and that I might be of help to them, period.

Q. Is that all they told you?

A. That is all.

Q. Before you got to this building, was the name Rosenberg mentioned at all?

A. No.

Q. Was the name Sobell mentioned at all?

A. No.

Q. Now, when you got to this building, you say you went up to the 26th floor?

A. 29th.

Q. 29th floor, and were you then given a seat?

A. Well, we went into a small office.

[fol. 388] Q. Private office?

A. A private office.

Q. Now, on the 29th floor, did you notice a lot of desks, one behind each other, running quite same distance; did you notice that?

A. No, I did not.

Q. You were ushered immediately into a private office; is that correct?

A. Yes.

Q. Was there a table there?

A. Yes.

Q. How many chairs were there?

A. Well, there was more than one table. There were at least two. I think they were one next to the other, and

there were two, three—there were at least three chairs next to them, and some cabinets.

Q. Did these two FBI representatives then sit down at one of the tables?

A. We all sat around the tables.

Q. Was there anybody else in the room when they began to query you?

A. No.

Q. Did anybody come in the room during the approximately three hours, three and a half hours, while you were being questioned, from noon to about 3 or 3:30 that day, in the middle of July, 1950?

A. Well, someone brought in sandwiches; a few people looked in. I don't believe that anyone came in, other than the two agents, and on some occasions, periods, one or the other went out of the room.

[fol. 389] Q. Now, who spoke first after you got into that room?

A. I don't remember which it was.

The Court: Aren't you, Mr. Bloch, spending an unusual long time on this subject?

Mr. E. H. Bloch: I don't think so, your Honor.

The Court: I want you to go ahead and exhaust it, but not—I think you are going into the minutest detail on this question. You are trying now to establish a motive on his part for telling this story.

Mr. E. H. Bloch: That is correct.

The Court: I believe that you are going into too much detail, as to who spoke first, and things of that character.

Mr. E. H. Bloch: I wasn't going to bore the jury with every minute detail of what happened during those three hours, but I have got something in mind, your Honor. Otherwise, I assure you that I wouldn't be asking these questions.

The Court: Well, will you bear in mind what I have said, and I trust to your good judgment that you will expedite this particular phase of your examination.

Mr. E. H. Bloch: I certainly will, and thank you very much.

Q. You didn't speak first, did you?

A. I don't believe so.

[fol. 390] Q. Well, what was the first thing that was said by one of the FBI agents when they began to ask you questions?

A. Well, the first things they brought up was the fact that they brought me down to discuss with me the question of espionage against the United States Government; that they had information that I was involved in such an espionage, and——

Q. When—I am sorry, I beg your pardon.

A. (Continuing) I said to them, I was not. I assume that they were referring to Rosenberg; and they didn't say yes and they didn't say no, and they continued to ask me questions.

Q. So one of the first things that you said to the FBI agents was that you were not in espionage?

A. That is correct.

Q. That you were not engaged in espionage at any time; is that correct?

A. That is correct.

Q. When was the question of your Communist Party affiliation brought up?

A. It was some time later, I would say, maybe half to three-quarters of the way through our questioning, their questioning.

Q. And when was the question of your loyalty oath brought up?

A. Well, I don't remember that they specifically mentioned the loyalty oath at all. I didn't say they did.

[fol. 391] Q. Now, you have testified this morning for a number of hours. Did you tell those FBI agents at that time everything that you have told us here this morning?

A. Well, all that I could remember at the time, yes.

Q. Were you asked when Rosenberg met with you?

A. Yes.

Q. And did you tell those FBI agents at that time that Rosenberg met with you in Washington, in June, 1944?

A. No, I did not.

Q. Now, you testified that you were approached—at least you testified on direct—that you were approached by Rosenberg for the first time in June, 1944, at your home, to become interested in espionage; right?

A. That is correct.

Q. Were you shocked when you were asked that?

A. When I was asked——

Q. Yes or no?

A. Yes.

Q. And did that incident stick in your mind since that time?

A. The incident, yes.

Q. Did the date stick in your mind?

A. No.

Q. Did the year stick in your mind?

A. Not the year particularly, no.

Q. When did you first refresh your recollection that it was round D-Day in 1944?

A. Well, in continuing to think about that first meeting [fol. 391a] in attempting to tie the date down, I at first said to the FBI that it occurred a relatively short time after I had moved into the apartment, which was in about September of 1943. I had told them that it was not a few months after—I at the moment did not recall. However, upon later recollection, I recall a particular incident that occurred during Mr. Rosenberg's visit, things that were said, which would tie the date down.

[fol. 392] Q. Just to recapitulate for a moment, if I may. You told the FBI agent at that July, 1950 interview that Rosenberg came to visit you for the first time and tried to interest you in espionage a few months after you moved into your apartment, which was September, 1943?

A. That is correct.

Q. Do you know how many months had elapsed between September and June of the following year?

A. Yes, I do.

Q. About nine?

A. Yes.

Q. You didn't tell him that?

A. Well, I told him——

Q. It was a few months?

A. I told him it was later. It wasn't during the first period that we had been in the apartment. I was trying to recall it in terms of the beginning of the apartment and

that was my first reaction in attempting to remember the time. There were other factors I recalled later.

Q. At any rate, you didn't mention the year 1944 at all, did you?

A. Oh, I said it was either late 1943 or 1944.

Q. Early 1944?

A. Early, possibly. It was the apartment I recalled.

Q. Well, late 1944 is not June 1944, is it?

A. No.

Q. At least that is one incident we find out where there is some variation between what you told the FBI agent at that time and what you told here in court.

[fol. 393] Mr. Saypol: I object to that because on the contrary, the witness's testimony is substantially to the same effect.

Mr. E. H. Bloch: Well, you know what I am laying the basis for, your Honor.

The Court: Yes.

Mr. E. H. Bloch: I have to convince your Honor about certain things before I ask for the production of certain documents and I am trying to do that.

The Court: I don't think you have done it yet.

Mr. E. H. Bloch: Pardon me?

The Court: I don't think you have done it yet.

Mr. E. H. Bloch: I am certainly trying to do it and that is the reason I am trying to be as precise as I can.

Q. Do you know whether or not the Rosenbergs ever lived in Washington, D. C.?

A. I don't know. I don't know of it.

Q. You have a brother? Have you a brother?

A. I have a brother, yes.

Q. What is his name?

A. Louis.

Q. Did he live in Washington at any time?

A. No.

Q. Did he ever visit you in Washington at any time?

A. No. May I amplify? I have another brother. I had one who died in——

[fol. 394] Q. I am sorry, I beg your pardon. At any rate, did you have a deceased brother who lived in Washington?

A. He did not.

Q. Did you have a deceased brother who visited you in Washington in the year 1940?

A. I believe he did.

Q. Now, did you ever go to any swimming pools in Washington during the hot season?

A. Well, yes.

Q. Have you a recollection of meeting Julius Rosenberg and his wife, Ethel Rosenberg, at a swimming pool in Washington in the summer of 1940?

A. I do not.

Q. It doesn't mean a thing to you?

A. No.

Mr. E. H. Bloch: Will you bear with me for one second, your Honor. I wonder whether the Court would declare a recess now?

The Court: All right. We will take our afternoon recess at this point.

(Short recess.)

Q. Incidentally, you are the sole support of your wife and two children, isn't that correct?

A. That is correct.

Q. And you have always——

The Court: I can't hear you, Mr. Bloch.

Mr. E. H. Bloch: I am sorry, your Honor.

Q. You are the sole support of your wife and two children?

A. That is correct.

[fol. 395] Q. And you were in 1948?

A. Yes.

Q. And in 1947?

A. Yes.

Q. And in 1946?

A. Well, my wife worked——

Q. Until——

A. She worked in 1947 for a while.

Q. Since then she hasn't worked?

A. No.

Q. And has not been gainfully employed?

A. That is right.

Q. And that was true in 1950, isn't that right?

A. Yes.

Q. And that is true today?

A. Yes.

Q. Now, when you were first brought down for questioning by the two FBI agents, you mentioned, in or about the middle of July, 1950, do you remember whether Julius Rosenberg had already been arrested?

A. I think he was, yes.

Q. Would that refresh your recollection as to precisely when you were brought down here?

A. Well, I know the approximate date because our plant went on vacation soon after that. I think they went the first two weeks in August, and this occurred just prior to that.

Q. I am sorry, I didn't get that.

A. The plant at which I worked went on vacation, I believe it was the first two weeks in August, and this meeting with the FBI took place just prior to that.

Q. And after the arrest of Julius Rosenberg?

[fol. 396] A. Yes.

Q. And you had read about this case even before the arrest of Julius Rosenberg, had you not?

A. Which case?

Q. This case, the case that we are in court about.

A. Yes, I read it.

Q. Do you remember reading that David Greenglass had been arrested?

A. Yes.

Q. A month before?

A. Yes.

Q. Now, after the interview, I am talking about the first interview, were you fearful that you might be prosecuted by the Government of the United States for perjury?

A. Yes.

Q. And did you want to clarify your thinking on that point by getting the advice of a lawyer?

A. No.

Q. Now, when for the first time did you see a member

of the John O. Rogge firm? I believe you said it was Herbert Fabricant?

A. I would say about a week after the first interrogation.

Q. Did you know at that time either by reading in the newspapers or through some other media of communication that the John O. Rogge firm represented David Greenglass?

A. I did not.

Q. But you know it now?

A. Yes, I do.

Q. When did you find that out?

A. The day I went to see the firm I was told by the [fol. 397] lawyers that they were in that position.

Q. I am sorry. How many times in all did you go down to consult with one or more of the partners in the Rogge firm?

A. Well, I saw them that first day we went down. I went there maybe about two more times. I don't recall. I went down a short time after that, and one other occasion when I was coming here to testify before the grand jury. I went down to see them and we went over to the court house together.

Q. Did you go over your story with your lawyers at that time?

A. Yes.

Q. Did you tell them anything about having taken a loyalty oath?

A. Yes.

Q. You did?

A. Yes.

Q. At the first conference?

A. Yes.

Q. And were you given advice about the legal consequences of having falsely sworn to the Government of the United States?

A. No. They just told me that I had committed perjury. I didn't ask them—I knew that there were—what the approximate penalties were from reading the cases but we didn't discuss the matter.

Q. What cases did you read?

A. Some of the perjury cases.

Q. What ones?

A. Well, the testimony before commitees of Congress, [fol. 398] for instance, where perjury was involved. I don't remember any specific one actually.

Q. You know that entailed a jail sentence?

A. Yes.

Q. Have you ever been arrested for perjury?

A. I have not.

Q. Have you ever been indicted for perjury?

A. I have not.

Q. And you have never been convicted of perjury?

A. No.

Q. Did Mr. Rogge or any of the members of his firm come over with you to this building to confer with any representatives of the United States Government at any time?

A. Yes.

Q. When?

A. Well, actually they didn't come over to confer. I was called by Mr. Lane's office prior to the grand jury appearance and I asked whether my lawyer could come along. He did come and stay for part of the questioning.

Q. Was that the only time a member of that firm came over with you?

A. No. He came over I think on another similar occasion when they were questioning me, when Mr. Lane's office was questioning me.

Q. Do you remember when Mr. Lane questioned you?

A. Well, it was—I could perhaps think about it.

Q. Well, please think about it. That was only last year, [fol. 399] wasn't it?

A. Yes, it was—the grand jury was sometime in August of 1950.

Q. And you considered that an important occasion, didn't you?

A. Yes.

Q. You can't tell us when?

A. The grand jury?

Q. No. When you were questioned by Mr. Lane?

A. Just prior to the appearance at the grand jury.

Q. Well, now, give us your best recollection of when it was?

A. It was——

Q. I am sorry, you looked at me quizzically. So I didn't know whether that meant——

A. It was in the second week of August. It was after the vacation or during—it was still during my vacation, that period, that I appeared before the grand jury.

Q. Did you go out of town for vacation?

A. Yes.

Q. In 1950?

A. Yes.

Q. With your wife and children?

A. Yes.

Q. Was that after you had consulted the Rogge firm?

A. Yes.

Q. And prior to the time that you appeared before the grand jury?

A. Yes.

Q. And prior to the time that you were interrogated by Mr. Lane, almost immediately before you went in to the grand jury, is that right?

A. Yes.

Q. How many days elapsed between the time Mr. Lane [fol. 400] questioned you and the time you testified before the grand jury?

A. I believe it was the same day.

Q. The same day?

A. Right close to it, because I came back from vacation, I was called back and I was to testify the day—the next day. So it was right there.

Q. Did you notify the authorities that you were going on vacation?

A. Yes, I did.

Q. Were you subpoenaed before the grand jury?

A. I was asked to come.

Q. Pardon me?

A. I was asked to come.

Q. Were you ever served with a subpoena?

A. I was not.

Q. Were you served with a subpoena to appear in court today?

A. No, I was not.

Q. You testified voluntarily before the grand jury without any compulsion, isn't that right?

A. That is correct.

Q. And you likewise are testifying today in this trial without any coercive process?

A. Yes, that is right.

Q. (Continuing) Ever having been served upon you, is that correct?

A. That is correct.

By the Court:

Q. Were any promises made to you in return for your [fol. 401] testimony before the grand jury or in court?

A. Absolutely none.

Q. Were you told by anybody connected with the Government that you would not be prosecuted for any offense you might have committed?

A. I was never told that. I never asked and I was never told that. There was no indication ever given me, any statement made to me.

Mr. E. H. Bloch: I am sorry. I can't hear.

The Witness: There was no statement to that effect ever given to me. In fact I was told that there were no promises to be made, nothing—the Government would make no statement in regard to what would happen to me.

By Mr. E. H. Bloch:

Q. The fact that you were under arrest or indicted?

A. That is correct.

Q. For any crime?

A. That is correct.

Q. Did you entertain any hope or do you now entertain any hope that by implicating these defendants the Government may not institute any proceeding, criminal proceedings against you?

A. No.

Mr. Saypol: I object to the form of the question if the Court please.

The Court: I will overrule it.

[fol. 402] Mr. Saypol: Will your Honor hear me?

The Court: Yes.

Mr. Saypol: I object precisely to the use of the word implicate. The witness has given a narrative story in his testimony as to incidents in which he participated, as to what he heard and saw. The legal conclusion, implication, is the prerogative of the jury, and that is the basis of my objection.

The Court: On that objection I will sustain it. I will reword it.

By The Court:

Q. Do you have any hope—is that your question? Does he presently have a hope?

Mr. E. H. Bloch: I am sorry, there should have been two questions. Did he at that time when he testified before the grand jury?

The Court: Reword it without the implication.

Mr. E. H. Bloch: All right.

By Mr. Bloch:

Q. Did you at the time you were first interrogated by the FBI or at any other time when you were queried by Government officials, entertain any hope that if you told a story in which you said that Julius Rosenberg and Morton Sobell tried to recruit you in espionage work, that the Government would go easy on you or would not prosecute [fol. 403] you criminally for any crime you may have committed?

Mr. Saypol: I object to the form of the question. May I state the reason? In the use of the quoted words, told a story.

Mr. E. H. Bloch: I didn't mean to make that implication.

The Court: All right, we will change that to mean, testified as you did today.

Mr. E. H. Bloch: That is right.

A. Well, from the first time that I was approached by the FBI I decided I would tell the whole complete story. I had no idea at the time of what would happen to me. Frankly, I didn't know whether I would be arrested the same day, and to this day I don't know what is going to

happen, and I decided that purely on the basis that I would tell the whole truth and at least in the future I would not be subjected to any perjury or any misstatements, and I would at least tell the truth, and hope in that way, at least that by taking that course I would at least come out in the best way. I could see no other course but to tell the truth.

Q. When you say, and I am referring to the last few words of your long answer, hope that you might come out the best way, will you be specific about that and tell us what you mean?

A. Well, it is difficult to define because I don't know [fol. 404] what is going to happen to me. I only know and I knew it from the first day I was questioned by the FBI, that I must tell the whole truth.

Q. But you say—I am sorry, I don't want to interrupt you, even though I think you are a little long-winded.

Mr. Saypol: I move to strike it out, that last comment, if the Court please.

The Court: Strike it out. Are you finished with your answer?

The Witness: Well,——

The Court: Go ahead.

The Witness: I certainly have hopes, to use the same terms, that the best will happen to me.

The Court: Well, you certainly do hope that nothing will happen to you?

The Witness: Yes, that is correct.

Q. Now, you had merely the most casual relationship or acquaintanceship with Julius Rosenberg during your student days, isn't that right?

A. Yes.

Q. And you didn't see him, you say, from the time of your graduation in 1938?

A. That is correct.

Q. Until June, 1944?

A. That is my recollection.

Q. That is a period of approximately six years, isn't that correct?

A. Yes.

Q. You have never written him any letters?

A. No.

Q. He had never written you any letters?

A. No.

[fol. 405] Q. You had never met him either in New York or Washington or elsewhere and engaged in any conversation with him is that right?

A. That is correct.

Q. Talking about these intervening six years?

A. That is right.

Q. Now did you have any telephone conversation with him during the six-year period?

A. No.

Q. And then you say he telephoned you sometime in the early part of June 1944 and asked to come to see you, is that right?

A. Yes.

Q. Do you remember what time it was that he telephoned?

A. Yes. It was after work. It was prior to my dinner or supper, I would say.

Q. Well, I don't know when you eat, and I don't think the jury does, so I wish you would be a little more specific.

A. I would guess the time was somewhere around six o'clock.

Q. You hadn't eaten your dinner as yet, had you?

A. That is correct.

Q. How long after you say Rosenberg called did he come to your house?

A. Well, not a long time after. We had our dinner and he came after. So it would probably be in the next hour or two.

Q. Would it refresh your recollection if I told you that [fol. 406] Rosenberg had dinner with you at your house that night in Washington?

A. Would it refresh—no, no, he did not.

Q. You don't remember what you ate that night?

A. Absolutely not.

Q. Did you have coffee?

A. I am sure, yes.

Q. Did Rosenberg have coffee with you?

A. No. We had a drink later, but we had no coffee.

The Court: Keep your voice up.

Q. How many rooms did you have in that apartment at Delaware Avenue—is that right, Delaware Avenue?

A. That is right. A living room, kitchen and a bedroom.

Q. About what time would you say Rosenberg came?

A. Sometime around eight o'clock.

Q. And your wife was present?

A. Yes.

Q. Did you have any plans for that night?

A. No, not that I remember.

Q. Did your wife stay in the living room when Rosenberg came and you began to converse?

A. Yes.

Q. How long did she stay with you and Rosenberg?

A. Well, we talked perhaps fifteen minutes, a half hour. We just discussed our work, marriage, children, just odd topics. We also—there was mention made at that time of the fact that D-Day had just come a short time before [fol. 407] and Rosenberg mentioned that he had had a drink with some friends in celebration of this and also——

Q. Pardon me, I don't like to interrupt, but did you tell us that on your direct examination?

A. I wasn't asked.

Q. Weren't you asked what the conversation that you had with Rosenberg was when he came to your house?

A. Yes. I said we talked.

Q. Now you are adding something, are you not?

A. Yes.

Q. All right, continue.

Mr. Saypol: May we hear the balance of the answer regarding the drink with the friends celebrating——

The Witness: We had this drink and we also had a drink, I believe it was wine, we will say, in celebration of the events of D-Day.

Q. Of course, all patriotic Americans celebrated D-Day, did they not?

A. Yes.

Q. Now, not having seen him for six years, he then came into your apartment, had a conversation with you and your wife about general things, marriage. Did you talk about you- old college days together?

A. No—perhaps; I don't know. There was nothing specific about that part of the conversation.

Q. Do you remember specifically any subject that you [fol. 408] discussed while your wife was present outside of those you have already mentioned?

A. No, I can't right now.

Q. And then Rosenberg, who had never been to your house before, you say, asked your wife to leave the room, is that right, at that point?

A. Well, he said to me, "I would like to see you alone," and either I or he or both of us just turned to my wife and said, "Would you step out? We would like to talk alone," and she went into the bedroom and stayed there while we talked.

Q. You didn't talk outside the apartment, did you?

A. No.

Q. Did you have an automobile at that time?

A. Yes.

Q. Did you drive Rosenberg any place after he completed his visit?

A. I did not.

Q. Did you ever drive Rosenberg any place in Washington?

A. No.

Q. Did you drive him to Union Station that night?

A. I did not.

Q. That is clear in your mind, isn't it?

A. Yes.

Q. And then you say Rosenberg, not having seen you for six years, hardly knowing you, launched into an overture to you to engage in getting information?

A. Yes.

Q. Is that correct?

A. That is correct.

[fol. 409] Q. Now, I would like you to tell us what you said after Rosenberg said what you have said he said on direct examination. What did you reply?

A. Well, I told him I would see about it. I didn't say I would not engage in this activity; I would think about it. He had raised the question about bringing the material to New York and I said, "I can't make any trips to New York on my own without my wife's knowledge. It is just

impractical." However, he was not put off by this and said, "Well, we will see about it and if you have anything, you bring it up," and I said "O.K., I will see." I don't believe I said I would bring anything to him. I said "I will consider it, and if something comes up and I feel I should bring it, I will."

Q. Did you mean what you said?

A. Yes, I did.

Q. Didn't you testify before that you were shocked at this overture?

A. Well, yes. It was new. Something which—well, I think it would shock anyone, from the approach. By his conversation he built up to this giving of information, telling about the Russian war effort, getting my reaction to it, my saying "yes, they are doing a good job."

Q. Now you at that time were working in the Navy Building?

A. Yes.

Q. Now when you checked into the Navy Building in [fol. 410] the morning of your working day, you had to check a clock?

A. I signed in.

Q. Were you searched?

A. No.

Q. When you came in?

A. No.

Q. When you went out was the same procedure followed?

A. Well, if you had a package it had to be checked. You were not searched. There was no search made of the person.

Q. There were security regulations in force, however, at your place of employment in the Navy Building in Washington in 1944, were there not?

A. Yes.

Q. And you as well as employees like you were compelled to reveal any package or packages or letters or any matter when they checked out at the end of the working day, isn't that correct?

A. Yes. Either you had a pass for the material or it had to be observed by the guards.

Q. So that is it not fair to say that you and employees like you in similar positions were under surveillance?

A. Yes.

Q. It wasn't very easy, was it, to get a package out of the Navy Building?

A. Well, it could be done, I am sure.

Q. You said, did you not, if you took a package out it had to be revealed and disclosed to the security guards at the entrance or exit, isn't that right?

A. That is correct.

The Court: It could be taken out without revealing it? [fol. 411] The Witness: I am sure, yes.

Mr. E. H. Bloch: I am sorry, I didn't hear the Court's question.

(Question and answer read.)

Q. You mean if you stole it?

A. Yes.

Q. If you secreted it in your pocket?

A. Yes.

Q. But you certainly couldn't take out any bulky package, could you, without it being visible to the security guards?

A. Yes—I didn't get that, I am sorry. I mixed the question up. It would be difficult to get out a bulky package, yes.

Q. Now then, Rosenberg left about what time in that first meeting after six years in June 1944? About what time?

A. Around 9:30.

Q. So he came about eight and your wife was present for about a half hour and then you and Rosenberg continued to discuss these matters you have testified to for about an hour, is that your testimony?

A. Well, not exactly. When we were through my wife came in and we spoke a little bit more and then he left.

Q. About what time did he leave?

A. I w*as*- say it was nine-thirty. I am not sure.

Q. How long would you estimate the conversation that you had with Rosenberg at your house that night lasted, while you two were alone?

A. I would say no more than a half hour, probably less. [fol. 412] It was relatively short. What was said was sort

of compressed. It was gone over—there was no stretching out the discussion. So it took less than a half hour, I would say.

Q. You have already testified and told us what was discussed while your wife was present. Then your wife left at your suggestion, which was as you say in response to Rosenberg's request that you two speak alone?

A. Yes.

Q. Now, after your wife left did Rosenberg come right to the point and talk to you about the possible espionage work, or getting information from your employer?

A. Well, he started out with this discussion of the Russian war effort and how well they were doing, but they could be in a much better position militarily if information wasn't being denied. He sort of built up to it, talking about that; my saying that they are doing a good job. It was both a discussion——

Q. How long would you say that part of the conversation lasted?

A. A few minutes.

Q. About as long as it took you to tell the Court and jury about it now?

A. I would say a little longer.

Q. About five minutes?

A. No.

Q. Well, how long? Give us some idea.

A. A few minutes; say three or four; less than five minutes.

[fol. 413] Q. Three or four, less than five minutes?

A. Yes.

Q. Then did Rosenberg lay it on the line to you and say, "Here, brother, now I want you to steal information from your employer"? Is that what he said?

Mr. Saypol: That is not the testimony.

The Court: That is right. I will sustain that objection. And I want you to know, ladies and gentlemen of the jury, that evidence comes from the mouths of the witnesses; it doesn't come in form of a question.

Q. Well, did he after the five-minute period ask you to get information from the United States Government?

A. Well, I will say this: it was near the beginning of

the conversation that he introduced it; he went on to say that other people were contributing. He himself was looking for people to contribute, and then got to the stage of asking whether I would be willing to do so. He may have mentioned security measures before he actually posed the question to me. It was all in continuity.

Q. Did he mention anything about security measures?

A. I mean his own security. Not security——

Q. Did he mention anything about surveillance under which you were?

A. Yes.

Q. In your employment?

A. No, there was no question raised or no mention made of how this material was to be taken out, no instructions given, but it was your responsibility to get. I mean if I [fol. 414] were to agree to take information out, to get it, there was no discussion of the means of doing that.

Q. Have you told us now substantially everything that was said at that June 1944 meeting at your house?

A. Substantially, yes.

Q. You have covered every important part of the conversation, is that correct?

A. Yes.

Q. Was there any question of money raised?

A. No question of money raised.

The Court: Are you almost through, Mr. Bloch?

Mr. E. H. Bloch: Pardon me?

The Court: Are you almost finished.

Mr. E. H. Bloch: I am trying to do this chronologically, your Honor, and I can't say that I will be honest with the Court if I say I am almost through. I really don't know. I am going to try to be as precise as possible, but this witness has covered a lot of ground. I think it is incumbent upon me to cover the same amount of ground in the minimum.

[fol. 415] By Mr. E. H. Bloch:

Q. Now, when after the June 1944 meeting did you meet Rosenberg next?

A. Oh, I recollect that I met him next in New York, later that summer when my wife and I visited New York and

because of his invitation to call him and perhaps have dinner with him or with other classmates we did call him and he arranged this meeting with other classmates.

Q. And where did you meet?

A. We met at 42nd Street and Eighth Avenue.

Q. And I believe you testified you went to a restaurant?

A. Yes.

Q. And how many people were in the party?

A. About five or six: five.

Q. Well, please tell the jury who were present and who dined together?

A. William Mutterperl.

Q. Was he a classmate of yours?

A. Yes. His brother whom I had not known before, myself, my wife, Rosenberg. I believe that is all.

Q. Was Mrs. Rosenberg there?

A. No, she was not.

Q. Then you ate together?

A. Yes.

Q. Did you discuss anything except general topics at that time?

A. No.

Q. Your wife was present?

A. Yes.

Q. When did you finish eating?

A. What was that?

[fol. 416] Q. When did you complete your meal?

A. I don't recall the hour.

Q. Approximately? Nobody expects you to know exactly.

A. About 6 o'clock.

Q. About 6 o'clock?

A. It was early evening.

Q. Then did you and your wife leave?

A. No.

Q. Did you stay with anybody in that crowd?

A. Yes, we all, and another person was called—I believe it was by Mr. Rosenberg, Joel Barr.

Q. Was he a classmate of yours?

A. I don't remember whether he was a classmate. I knew him from school.

Q. You met him as casually as you met Rosenberg at school?

A. Yes. He had dinner with us and we all went up to the apartment of this Joel Barr.

Q. Where was that?

A. On Broadway. In the 90's on Broadway.

Q. So in a sense it was a reunion of college students, is that right?

A. Yes.

Q. Or of alumnae?

A. Yes.

Q. Then did you and your wife leave?

A. No. After that we went on. Mr. Barr suggested that we visit a friend of his who lived in Greenwich Village and we went down, Rosenberg, myself, Mutterperl and my wife went down to Greenwich Village and we visited him. [fol. 417] He entertained for a short time. Then we broke up.

Q. When you say "him", do you remember the name?

A. Seran, I don't remember his first name.

Q. Was he also a classmate of yours in C.C.N.Y.?

A. I hadn't met him. I didn't know him.

Q. You don't remember him at all?

A. No.

Q. Did you have a couple of drinks there?

A. No. He played the guitar and played some music on a phonograph.

Q. Then you and your wife left?

A. Yes.

Q. So it is fair to say that the second time you met Rosenberg it was a social gathering?

A. Yes.

Q. Of college classmates?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, when was the third time that you met Rosenberg?

A. I met him——

Q. I am sorry. May I withdraw the last question. Now, at that second meeting where you all went out to dinner

together, did you have any conversation with Rosenberg which related to the conversation that you say took place at your house in Washington in June, 1944?

A. No.

[fol. 418] Q. None whatsoever?

A. I don't recall any.

Q. All right. Now, when was the next time that you met Rosenberg?

A. Well, in the summer of 1945. I had testified that I came to New York and called him and we were desirous of a place to stay, and he invited us to stay at his apartment.

Q. Now, he did not invite you to come to his house, in June of 1945, did he?

A. In June?

Q. You said, it was in June 1945 or in the summer of 1945?

A. In the summer of 1945.

Q. Do you remember what month?

A. I believe it was about August.

A. August, all right. August of 1945, you came up here to New York and then you telephoned him?

A. No.

Q. You telephoned him at his house or at his place of business?

A. At his house.

Q. At his house?

A. Yes.

Q. About what time?

A. It was late in the evening.

Q. And that telephone call of yours was not through any prearrangement, was it?

A. No.

Q. You had not seen Rosenberg in almost a year; isn't that right?

A. That is correct.

Q. But you were here in a so-called strange city, at least this was not your home and you wanted a place [fol. 419] to stay for yourself and your wife; is that correct?

A. That is correct.

Q. And that was the reason you called Rosenberg?

A. Well, he had, on both the previous visits, sort of in-

vited us to call him at any time. He might even have suggested we could stay there on some visit. It was purely a gracious invitation.

Q. Generally the kind of invitation people usually convey to each other?

A. Yes.

Mr. Saypol: I will object to that and ask to have it stricken, because I don't know about generally kinds of invitations, your Honor.

The Court: Overruled.

Mr. E. H. Bloch: I will consent. It is not important.

Q. At any rate, within a day or a week or a month prior to the time that you came here in the summer of 1945, Rosenberg hadn't said to you, "Call me up, I want to see you; get in touch with me"; had he?

A. No.

Q. And when you called him up, it was for the purpose of finding a place to sleep for yourself and your wife?

A. That is correct.

Q. And Rosenberg said to you, "Come on up. My wife is away in the country"; is that what he said?

A. That is correct.

[fol. 420] Q. And he extended the hospitality of his house to you ?

A. That is correct.

Q. At least to the extent of giving you a bed?

A. That is correct.

Q. And, as a matter of fact, he had to sleep on a couch?

A. No.

Q. Did he sleep in the apartment?

A. There was a bedroom. My wife and I slept on a Hollywood bed that was in the living room.

Q. I see. All right. Now then——

The Court: What is a Hollywood bed?

The Witness: Just sort of mattress without front and back, not a regular bed.

Mr. E. H. Bloch: Without a back, your Honor.

Q. At any rate, you came there and you and your wife slept?

A. Yes.

Q. Did you leave, you and your wife leave the following morning?

A. Yes.

Q. And that takes care of that visit; is that right?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When was the next time you saw Rosenberg?

A. Well, in September——

Mr. Saypol: Just a moment. When Mr. Bloch says "Is that all that happened" does Mr. Bloch mean——

[fol. 421] Mr. Bloch: I didn't say that. I said, "That takes care of that visit."

Mr. Saypol: There were conversations that he has testified to——

The Court: I can't hear you, Mr. Saypol.

Mr. Saypol: I say, there were conversations that he testified to on direct, that took place, and I don't want the witness misled or any impression created that now in his cross-examination he is leaving something out that wasn't testified to on direct.

The Court: I think your observation is a sound one.

Mr. E. H. Bloch: If the Court please, I submit this is cross-examination and I don't have to be bound by this witness' story that he gave on direct, neither do you, or neither does the jury.

The Court: No, no, let us have no argument. Mr. Saypol, I don't want to hear any more.

Mr. Saypol: I won't address myself to the Court unless your Honor permits me.

The Court: Mr. Bloch: I don't want to hear any more. The point is, you want to leave that particular topic, but you have not asked the witness, as I understand it, "Have you told us everything that you said to Rosenberg and he said to you?"

[fol. 422] Mr. E. H. Bloch: I did not ask that question.

The Court: Very well.

Mr. E. H. Bloch: My questions speak for themselves, your Honor. I am not trying to be abstruse here.

The Court: Proceed.

Mr. E. H. Bloch: I hope I am clear.

By Mr. E. H. Bloch:

Q. Now, when was the next time that you saw Rosenberg?

A. In September of 1945, when he——

Q. And that was about a month after this visit at his home, where you and your wife stayed over?

A. Yes.

Q. Where did that take place?

A. At my home in Washington, at 247 Delaware Avenue, S. W.

Q. And did Rosenberg call you?

A. Yes.

Q. Did he ask to come over?

A. Yes.

Q. Was that in the late afternoon or early evening that he called?

A. That was morning.

Q. About what time?

A. I can only guess the time. It was—we had just risen. My wife was not dressed as yet when he called. It was about 10 o'clock, I would say. We slept later. It was a Saturday, I recall.

Q. It was a Saturday?

A. Yes.

Q. September, 1945; is that correct?

A. That is correct.

[fol. 423] Q. How many hours were you working for the Navy Department—how many hours per week were you working——

A. Well——

Q. Just a second. Let me ask the question before you answer it. How many — per week were you working for the Navy Department in 1945?

A. I believe we were working over 48 hours. This was after the war and the hours had been cut down.

Q. You are sure of that?

A. Yes.

Q. Now, as a matter of fact, for many years during the war you were working on a 48-hour basis?

A. Yes.

Q. When did that 48-hour work week become lessened?

A. It was after the war, around the end of the war, but

I don't recall the date or the time, I mean, when it was exactly.

Q. You say that in September 1945 you were not working 48 hours?

A. Well, I don't believe so.

Q. Is that your testimony?

A. Yes.

Q. You are sure of that?

A. Fairly positive. I can't be absolutely certain. I believe that is so.

Q. Well, if you have any doubt, I want you to think about it.

A. Well, to my recollection, yes, we ceased to work 48—overtime. Now, when that ceased, I don't know, I can't remember that exactly.

Q. Well, at any rate, is it your testimony—let's get this [fol. 424] clear—is it your testimony that in September 1945 you were not working on Saturdays for the United States Government?

A. I do not know. I only testified that I was not working that day. I don't know whether—when we ceased work on Saturdays. I just recall this occasion. I know that it must have been a Saturday; he came in the morning and I know that after he left I went shopping, and I am positive that it was a Saturday. As to whether we were working then Saturday, I don't know. I could have been off anyway.

Q. That is what I wanted to ask you. While you were working for the Navy Department on a 48-hour week basis, did you ever take off Saturdays, outside of your vacation period?

A. I don't remember. I could have. I took off any time that I thought I wanted to take time off, or had some need for taking time off.

Q. We are trying to get your best recollection.

A. Yes.

Q. I don't expect you to be a wizard.

A. Yes.

The Court: All right, I think we have the answer. Proceed.

Q. That is your best answer?

A. Yes.

Q. You may have taken off some Saturdays?

A. Yes.

Q. Now, what time do you say Rosenberg got to your house?

A. 10 or possibly 11 o'clock in the morning. It was in [fol. 425] the morning.

Q. In the morning. Now, in these two meetings in Washington, at your house—there were two; is that correct?

—. That is correct.

Q. Did Rosenberg ever at any time tell you that he had been assigned to do some work for the Government or for his employer, Emerson Radio Company, in Washington?

A. I recall something like that, but I don't remember it now. It strikes a familiar note, but I don't recall him saying that.

Q. Well, will you say that he did not tell you that he was down in Washington——

A. I couldn't say.

Q. —in Washington on business?

A. I couldn't say that he did not tell me.

Q. How long did Rosenberg stay at your house that Saturday morning in September 1945?

A. Well, he stayed only a short time. My wife had an appointment to have a picture taken at our union headquarters for some committee on which she was working, and she was dressing, and when she was dressed we had to leave, and I told him so. He spoke to me and he sort of wanted to continue speaking to me. I told him, if he wants to continue the conversation that he had to come with me, that I had to take my wife to the union hall; she wanted to be driven; and he first didn't want to, he didn't want to be seen at this union place, but I [fol. 426] said to come up if he wants to speak to me. He finally agreed and I drove him up to that place, the union hall.

Q. Where was the union hall to which you belonged?

A. On 18th Street, off Connecticut Avenue, just off Connecticut Avenue.

Q. That is northeast?

A. Northwest.

Q. And you lived in northeast, didn't you?

A. Southwest.

Q. Southwest?

A. That is correct.

Q. You had to come across the Capitol Street in order to get there; is that right?

A. Well, actually I lived right near the Capitol.

Q. I happen to know where that is.

A. Yes.

Q. Now, how long did it take you to get from your house to the Union hall by automobile?

A. It couldn't take more than 10 minutes.

Q. How long did Rosenberg stay at your house and talk to you before you all went out to get into the automobile to get to the union hall?

A. I would say no more than 15 minutes; quite short. He wanted to continue——

Q. And during that period of 25 minutes——

Mr. E. H. Bloch: I withdraw that.

Q. After you reached the union hall, did Rosenberg then [fol. 427] leave you?

A. No, he stayed and talked with me for a short time downstairs.

Q. Downstairs?

A. That is correct; and then——

Q. Did he go up to the union hall with you?

A. When we were through, I said, "I am going up to see my wife's picture being taken." He had some time; he didn't have to leave at the moment, and I said, "Well come upstairs"; and he did walk upstairs with me, and I believe the pictures were being taken at the time; and then——

Q. Did you—I am sorry; I didn't want to cut you off.

A. (Continuing) When the pictures were taken, the three of us went downstairs and he got onto a trolley which passes the union hall and which goes to Union Station. I believe he said he was going—he was taking the train.

Q. Now, the union at that time was located one flight up in that building, was it not?

A. Yes.

Q. And did you introduce Rosenberg at that time to any fellow union members of yours?

A. I did not.

Mr. E. H. Bloch: Pardon me? Will you bear with me just one second? There seems to be some question.

May I clarify something?

Q. Is it your testimony that when Rosenberg came to [fol. 428] visit you that Saturday morning in September 1945, he said to you, either directly or by language which made his intention unmistakeably clear, that he did not want to be seen at the union hall?

A. Yes, I believe that that was the words he used or it was the intent of what he was saying, that he preferred not to go up there. I told him that it seemed to me all right, that there was no reason why he couldn't.

Q. And he did go with you?

A. Yes, he did.

Q. And there were other people there?

A. Not many. There were just—there weren't many people there, just those who were having their picture taken.

Q. And how many people would you say were there?

A. Six, a half a dozen, perhaps more; the photographer.

Q. Together with members of the staff of the union?

A. I don't know if there were any other members.

Q. Didn't you know the members of the staff of the union?

A. Yes, but I don't remember whether there were any, I mean, I don't remember anybody that was up there at the time except my wife.

Q. At least there were five or six union people there?

A. Yes.

Q. And Rosenberg came in, normally, with you——

A. Well——

[fol. 429] Q. —to the union hall, did he not?

A. Well, yes—well, no one saw him. We both just stood outside; we were just watching this picture.

Q. You didn't make any attempt to secrete your presence, did you?

A. Oh, no.

Q. And Mr. Rosenberg didn't make any attempt to hide his presence there?

A. I don't know whether he did or not.

Q. Well, you saw him; he was alongside of you, was he not?

A. Yes.

Q. Now, after your wife had her picture taken at the union hall, you said the three of you then went downstairs again?

A. Yes.

Q. And shortly thereafter Rosenberg took some troll-y car?

The Court: I didn't hear that.

Q. And shortly thereafter, Rosenberg took some trolley car and went away; is that right?

A. That is correct.

Q. Now, did you have any discussion with Rosenberg at the union hall, proper?

A. I believe that downstairs we did speak, at the end of the conversation concerning this matter, saying to come and see him. I don't recall during—how the conversation was split, at my house and the union hall. We did stay downstairs just a few minutes and I was anxious to see [fol. 430] my wife and her picture being taken. Then we went upstairs.

Q. Now, you say the entire automobile trip took about 15 minutes; is that the approximation?

A. 10.

Q. 10 to 15 minutes?

A. Right.

Q. And you say Rosenberg was in your house before you all went out, about how long?

A. 15 minutes.

Q. Now, during the 15 minutes that Rosenberg was in your house, were you making preparations to go to the union hall with your wife?

A. I believe that I was dressed; I might not have been completely dressed. I remember that my wife was not and she was in the bedroom preparing herself. I do recall that we didn't have much time. Rosenberg did want to speak to me and I said, "If you want to"—I mean, "If you want to, you can come along with me," and, as I say, he first didn't want to, but then he agreed to come.

Q. And you said that, knowing full well that your wife would be present in the automobile?

A. Yes, we didn't discuss anything in the automobile.

Q. That's right; and you didn't have any idea in your mind that he wanted to discuss anything that was secret or clandestine or furtive, did you?

A. Well, I believe he had started the conversation at my home concerning what I had testified to before; in the car, we were just traveling and then we spoke again; we [fol. 431] finished the conversation at the union headquarters.

Q. Now, while your wife was in the car did you discuss any subjects that you have mentioned, with respect to what took place at the first conversation in your house, in June 1944, or the few minutes' conversation, that you say you had with Rosenberg before you and your wife and Rosenberg went out to the car?

A. No.

Q. When you got to the union hall, how long did you stand with Rosenberg and discuss matters?

A. A very short time.

Q. How long?

A. Not more than five minutes.

Q. Was your wife present?

A. No, she had gone up.

Q. Now, when was the next time that you saw Rosenberg?

A. Well, I don't recall the date when I visited him at his home, in the exact month. I only know the general area. There was also——

Q. Wait, wait. Let's take one incident at a time.

A. All right.

Q. Now, when was the next time, as near as you can refresh your recollection?

A. Well, it was sometime in the winter of '46, '47. I know it was cold.

Q. In other words, that was at least four or five months later?

A. Oh, yes.

Q. Subsequent to this incident of September '45, that [fol. 432] you have just told us about?

A. Yes.

Q. Now, were you invited by him to come to his house by specific invitation?

A. Wait. May I correct what I said? I said it was

the winter of '46, '47 and I had seen him in '45. I don't want to confuse it.

Q. Wait, wait.

The Court: He had seen him in Washington in September of 1945.

Mr. E. H. Bloch: That is correct.

The Court: He saw him again in the winter of 1946 or early part of '47.

Mr. E. H. Bloch: That is what I thought his testimony was.

The Witness: Yes.

Q. In other words, about four or five months later; is that right?

The Court: No, almost a year later.

Mr. E. H. Bloch: Oh, a year and four months later, I am sorry.

Q. A year and four months later?

A. Yes.

Q. Had you seen him at all during that intervening period?

A. I don't recall any period.

Q. When you came to his house, did you call him up on the telephone?

A. Yes.

Q. Had he given you any specific invitation to come [fol. 433] to his house during that intervening year and a half?

A. Well, it was a continuing invitation, as far as he was concerned. He had said that when I was, whenever I was up there, or whenever I wanted to discuss this matter of espionage—I mean, there was no restrictions laid against my coming to see him.

Q. Did you come to see Rosenberg in the winter of this last year, that you are talking about, for the purpose of discussing espionage with him?

A. Well, yes.

Q. You voluntarily came up to New York, you say, for the purpose of discussing espionage with Julius Rosenberg; is that right?

A. Yes.

Q. When was this, in terms of days of the week?
A. I don't recall.

By the Court:

Q. Was this after your talk with Sobell?
A. Yes.
Q. Was it pursuant to your talk with Sobell?
A. Yes.

By Mr. E. H. Bloch:

Q. Were you living in New York at the time?

Mr. Kuntz: We object to your Honor's question.
The Court: Upon what grounds?
Mr. Kuntz: On the ground, first of all, that it is leading; secondly, that it is incompetent, irrelevant and immaterial to the issues involved in this case.
[fol. 434] The Court: Whether he did it pursuant to Sobell's——
Mr. Kuntz: Calling for a conclusion as to the purposes.
The Court: Denied on all grounds.
Mr. Phillips: I think the use of the word "pursuant" is objectionable, if your Honor please.
The Court: Denied.
Mr. Saypol: Will your Honor suffer an interruption? I should like the record to be complete, to support your Honor's observation. The former cross-examination—I take it that is the basis for the Court's helpful question—eliminates entirely the witness' testimony on direct as to the circumstances under which he saw Rosenberg.
Mr. E. H. Bloch: I object to this statement of Mr. Saypol's, because I believe it is for the jury and the jury alone to test the credibility of this witness.
The Court: That is correct.
Mr. E. H. Bloch: And to draw the reasonable inferences.
The Court: That is correct; and it is for the jury and the jury alone to test the credibility of the witness, and it is for the Court also to see to it that the jury is not in any way confused by the facts of the evidence; and so, where the Court is of—and I don't want to intimate that Mr. [fol. 435] Bloch is doing it deliberately——

Mr. E. H. Bloch: Thank you.

The Court: —where the Court is of the opinion the jury may not follow the sequence of events, the Court will not hesitate to call that to the jury's attention.

By Mr. E. H. Bloch:

Q. Now, where were you living at the time you called Rosenberg up, at the time of this last incident that we have come to?

A. In Washington.

Q. And do you remember whether it was on a weekend?

A. I don't recall, no.

Q. Did you come up with your wife?

A. I don't remember the occasion, other than I was there and called him.

Q. I asked you whether or not you came up to New York with your wife? Now, that is a simple question. Did you or did you not?

A. I don't remember.

Q. But you do remember the second visit some years before, where you did bring your wife to New York?

A. Yes; this was a meeting I was having alone with him.

Q. Well now, I want to ask you whether or not that refreshes your recollection as to whether or not your wife came along with you?

A. No, it does not.

[fol. 436] Q. How long did you stay in New York?

A. I don't recall.

Q. Was it an hour?

A. In New York?

Q. Now, look, if I ask you a question and you don't understand it, please don't hesitate to say that you don't. Nobody is trying to trick you here, let me assure you of that.

A. Well, I stayed more than that, because I went up to his house and I spoke with him and I left. I visited New came up—otherwise I was in New York quite often, so I don't recall the particular circumstances, but I was in New York the evening—I know I came up there in the evening to see him; it was in the evening; so therefore I would be there some time and I might have been there longer; I might have been continuing to another—to either a train or to some other place, I don't recall. I just recall the incident.

Q. Did you come to New York on that occasion at the expense of the Government?

A. I presume so, because I made most of my trips to New York on business, and therefore, for the Government.

Q. Well, was it a business trip?

A. I don't recall.

Q. Was it a legitimate business trip for the Government?

[fol. 437] A. I only made legitimate business trips for the Government.

Q. Well, if you made—if you only made legitimate business trips for the Government and you came up on Government expense, does that refresh your recollection as to whether or not you didn't come up to New York in the routine procedure and regular course of your duties?

Mr. Saypol: I object to that as to form.

A. I don't understand the question.

The Court He doesn't understand it.

Mr. E. H. Bloch: All right, I will try to simplify it.

Q. You say you only made legitimate business trips?

A. That is correct.

Q. And every time you made——

Mr. Saypol: For the Government.

Mr. E. H. Bloch: I am sorry, of course, for the Government.

A. Yes.

Mr. E. H. Bloch: Well, he claims he never did anything illegally.

Q. And whenever you went on legitimate business trips, you had to make out certain vouchers for the Government?

A. Yes.

Q. Didn't you?

A. Yes.

[fol. 438] Q. And you had to swear that the expenses that you incurred were incurred by you in performance of the duties that had been assigned to you, in connection with traveling outside of Washington; isn't that right?

A. Yes.

Q. And you received a per diem expense account?

A. Yes.

Q. $6. a day, I believe it was, at that time?

A. Yes.

Q. Now I ask you whether or not that refreshes your recollection as to whether or not you came up to New York from Washington at the time of this last incident, at Government expense?

A. I don't know how that would clarify it to me? I said I don't recall the particular circumstances of that visit.

The Court: All right now, is this a convenient place to break off?

Mr. E. H. Bloch: I think so, your Honor.

The Court: Very well.

Ladies and gentlemen, you are excused until 10:30 tomorrow morning; 10:30 tomorrow morning in the courtroom, but I suggest that you congregate there at 10:30 and relax there until 10:30 tomorrow morning.

(Adjourned to March 9, 1951, at 10:30 a.m.)

[fol. 439] UNITED STATES OF AMERICA

vs.

JULIUS ROSENBERG, ET AL.

New York, March 9, 1951;
10:30 o'clock a.m.

Trial resumed

Mr. Saypol: May I approach the bench, your Honor.

(The following discussion took place at the bench.)

Mr. Saypol: Mr. Bloch, my associate, Mr. Kilsheimer, informs me that he learned last night that his father-in-law was acquainted with one of the jurors, Juror No. 4. He reported it to me promptly this morning and I am reporting it to the Court. By the same token Mr. Kilsheimer advises me that he has never met, never seen, knows nothing about or ever talked with the juror in question.

I think that ought to be spread on the record for the protection of the record.

Mr. E. H. Bloch: The only question in my mind, Mr. Saypol, is whether or not Juror No. 4 knows that the man he knows is the father-in-law.

Mr. Saypol: I don't know. Mr. Kilsheimer hasn't talked [fol. 440] with the juror. So he doesn't know.

The Court: I don't think it would make any difference. Of course, we searched the mind of that particular juror and apparently the juror didn't know of the relationship because that was one of the questions we asked.

Mr. E. H. Bloch: That is correct.

Mr. Kuntz: The point is, we exhausted every challenge except the last one.

The Court: What about it? Suppose you did.

Mr. Kuntz: If we had known that we might have used the peremptory challenge.

The Court: What do you want to do?

Mr. Kuntz: Well I say—I am not the only counsel, but I for one do not feel where my client's life is at stake that I can take a chance.

The Court: Yes, but what do you want to do? Mr. Kilsheimer didn't know about it then, neither did the juror know about it.

Mr. Kuntz: I am not casting any reflection.

The Court: I am asking you the question. Mr. Kilsheimer didn't know about it and the juror didn't know about it at that time. It wasn't a case of withholding something from you. That is the difference.

Mr. E. H. Bloch: I am a little worried about it. Do [fol. 441] you think there would be anything amiss if we all consent, if the Court privately would ask this juror whether the man that he knows he knew to be the father-in-law?

The Court: Would you gentlemen object if I did that?

Mr. Kuntz: What is that?

The Court: Mr. Bloch suggests that I ask the juror privately whether or not he knew that this gentleman, whatever his name is, was the father-in-law of Mr. Kilsheimer.

Mr. Kuntz: I have no objection to that. I have complete confidence in your Honor.

The Court: All r ight. Suppose I go in chambers right now and ask him.

Mr. Kuntz: I think we should give it some thought. I think your Honor should question him.

The Court: I will do that right now in chambers.

Mr. Phillips: That is not all—that we cast any reflection on him; we say suppose, in the course of his deliberations, he learns of the closeness of the relationship between him and one of the men in the United States Attorney's office; May that not in some way influence his conduct?

Mr. Saypol: The first thing I want condemn——

The Court: Let him finish.

[fol. 442] Mr. Phillips: Not for an instance would I have injected into this discussion, good faith, that anybody knew anything about it in advance. That we will all concede to be so, absolutely. But if someone was connected with a father-in-law of mine——

Mr. Saypol: Are you implying that he knew about it?

The Court: No. He is saying just the opposite.

Mr. Phillips: No. I am saying the contrary. I say in the future during the weeks this case will continue, who can tell what influence any relationship of that kind may have on a person deliberating.

The Court: Well here is what I will do: I will talk to this juror with your consent gentlemen.

Mr. Saypol: Yes.

The Court: I will ask him whether or not this man has ever talked to him about this case, whether he knew the relationship. I will also ask this juror not to talk to this gentleman in the future during the course of this case.

Mr. Saypol: Hasn't your Honor admonished each juror not to talk about it?

The Court: Yes, everybody.

Mr. Saypol: I am willing that the Court do anything as long as counsel are satisfied with respect to this situa-[fol. 443] tion. I don't want any lingering doubts. That is why Mr. Kilsheimer reported it to me and I reported it to the Court.

The Court: Would you write down the name of your father-in-law, Mr. Kilsheimer?

(Mr. Kilsheimer writes on paper.)

Mr. Saypol: If counsel want to do it in court it is all right with me. If counsel will consent that it be done by the Court in chambers, all right. Any way you want to do it is all right with me.

The Court: John Hamilton.

Mr. Saypol: You must remember that we are in a community where you couldn't avoid something like this. It hasn't any invidious connotation.

The Court: All right. I don't think we need to argue the point any more. I got your point well in hand. It is one of those situations that arise in a case. Of course, we would all be happier if it didn't arise, but it is here and we have to meet it. So with the consent of everybody, Messrs. Bloch, with the consent of everybody I shall now retire to chambers and I shall talk to Juror No. 4. What is his name?

Mr. Saypol: Gibbons.

[fol. 444] (The following proceedings took place in the Judge's robing room, outside the hearing of counsel for both the Government and the defense, with the following being present:

The Court, Mr. Gibbons, juror No. 4 and the stenographer.)

The Court: Something has just come up, Mr. Gibbons, in the trial, and I just want to make certain that the facts are as they are related. It is nothing for you to be concerned about particularly, because I don't want you to think, before I put my questions to you, that there is any innuendo here that you have done anything wrong.

By the Court:

Q. Now, do you know a man by the name of John Hamilton?

A. Yes, your Honor.

Q. Did you know that when you were being selected that he was a father-in-law of one of the Assistant U. S. Attorneys in the office?

A. A father-in-law of what?

Q. Of one of the Assistant U. S. Attorneys in the office?

A. No, your Honor.

Q. Very well, that is what I wanted to get for the record. I thought that you didn't. You understood my question,

when I was questioning the panel, and I asked the jurors to advise me if they knew any assistants or knew anybody related to any assistants?

—. That's right.

[fol. 445] Q. And when you answered that you did not, you were answering in good faith; is that right?

A. Well, your Honor, do you recall when I got up and stated I belonged to the CIO?

Q. I remember that.

A. Well, what I wanted to bring out was that at one time Harry Sacher was counsel for that union, and I am connected with that union. Now, I didn't know Harry Sacher at all; never spoke to him.

Q. Are you an official of the union?

A. I am a chairman.

Q. Chairman of the union?

A. Yes, of the Clerical Union.

Q. I didn't know you were the chairman.

A. Not of the outside operators, your Honor. This was just a clerical union. I was just chairman. That is what I wanted to let you know. You said "Would that make you biased?" I said "No".

Q. Well, dealing with that particular phase of it, that is right, I remember that you did say that, but you didn't tell us that you were chairman. I remember you said you were connected with that union.

A. That's right.

Q. Now, the thing that I am addressing myself to is just this phase of it: I want to make sure that you did not withhold something, that you knew. You didn't know of [fol. 446] Hamilton's relationship?

A. No.

Q. With anybody in the United States Attorney's office?

A. No.

Q. And, as a matter of fact, we have since learned—and it just came up last night—that he is the father-in-law of Mr. Kilsheimer of the United States Attorney's office, and you never knew that?

A. I never knew that.

Q. That is all right. You still say and reiterate that you will keep your mind open and decide this case based on the evidence?

A. I will, absolutely.

Q. That goes regardless of whether or not you are an officer of the union or whether you knew somebody in the United States Attorney's office—somebody who knew somebody in the United States Attorney's office?

A. That's right.

Q. Of course, you remember my admonition not to discuss the case with anybody, so that you won't in the future discuss it with anybody?

A. That's right.

Q. Thank you very much.

A. I am going in with an unbiased mind, your Honor.

Q. Very good, very good. All right Mr. Gibbons.

A. Thank you.

The Court: Thank you very much.

(The proceedings were resumed in court, at the bench, [fol. 447] outside the hearing of the jury, but with all counsel in the case present):

The Court: The man did not know of any relationship between Hamilton and anybody in the United States Attorney's office. As a matter of fact, he indicated great surprise, but what he wanted to tell me and what had been on his mind particularly was the fact that he said, "You remember I had raised my hand and said that I was connected with the union, CIO union?" Do you remember that? He said, "I never got to the point of telling that Harry Sacher had been counsel for that union." He said, "Now, I didn't know him but he was counsel and I am the chairman of that particular clerks' union." He said, "I think you ought to know that."

So there you are.

Mr. Saypol: I better talk to my colleagues now about that.

Mr. E. H. Bloch: I will tell you what is going through my mind, and that is in the T.W.U., the politics of the membership is so divided one way or the other that it would be almost impossible, unless you asked a direct question concerning his political ideas, to get him to——

The Court: Well, he says, "I said then and I say again that I am going into this case without any bias and I intend

to keep my mind open and decide this case on the evidence.". [fol. 448] He said, "I repeat it now".

As a matter of fact, I put the final question to him and I said, "Well now, with your activity in your union and now with the knowledge that Mr. Hamilton is related to somebody in the United States Attorney's office, would you still, can you still keep your mind open and decide it upon the facts"?

He said "I certainly can".

Mr. Saypol: I would like to talk to my colleagues.

The Court: Well, we will proceed and supposing you give this some further thought. It is nothing that you need resolve right now.

Mr. Saypol: If we proceed, we proceed in front of the juror.

The Court: No, no, I say, let's proceed with the evidence.

Mr. Saypol: I say, you have to that in front of this juror.

The Court: Yes, you will, but you have alternates here.

Mr. Saypol: That troubles me considerably. Would you give me about three or four minutes to talk to my colleagues about it?

[fol. 449] The Court: All right, go ahead.

Mr. E. H. Bloch: I am talking out of turn, but after all of these facts surrounding this incident, I am satisfied that the juror will be an impartial one.

Mr. Saypol: I don't know.

Mr. E. H. Bloch: I am only speaking for myself now.

Mr. Kuntz: It isn't a question that I am satisfied, that is silly, but I have a duty to our client.

The Court: You want to have something on the record; you are going to raise an objection; you are not going to miss an opportunity.

Mr. Kuntz: You don't know me long enough. I have never been very technical in cases, but I have been a trial man for years and——

The Court: Yes, now note your objection.

Mr. Kuntz: The point is this, that how can I have it on my conscience that maybe I made a slip that would seriously affect the defendant? I don't care to have that on my conscience, and I assure you——

The Court: Well, you are going to have that throughout this entire trial on everything you do, and if it should ultimately be resolved against your client, I know that you will have it on your conscience that maybe you didn't do enough, you will say to yourself.

[fol. 450] Mr. Kuntz: What I don't know, I don't know. What I judge on some facts and other facts I do not have, that is a different thing, but when I know a thing, and then I take what we call " a gamble", I think it is a serious business for a lawyer and I have never gambled in my life.

The Court: What would you suggest? Are you asking that one of the alternates be seated in place of No. 4?

Mr. Kuntz: That is what I would like to discuss with the others.

The Court: I am not saying I want to do that.

Mr. Kuntz: I am just expressing my doubts. I want you to know I am sincere in this. I have certainly been around the courts for——

The Court: I am just as convinced that this man's mind is absolutely open, that he is an honest witness and it doesn't make any difference to him whether Mr. Kilsheimer is related to Mr. Hamilton or whether he knows him or doesn't know him.

Mr. Kuntz: I don't doubt the man is honest.

The Court: I think it is much ado about nothing. All right, do you want to go ahead, Mr. Saypol?

Mr. Saypol: Just give me two or three minutes. The state of the record is where Mr. Bloch is satisfied and Mr. [fol. 451] Kuntz, isn't?

The Court: That is correct; the record will so indicate.

Mr. Saypol: (After discussion with colleagues) This Sacher business is a kind of a dilemma, but since Mr. Bloch is satisfied, I am satisfied to let the matter stand at status quo.

The Court: Are you satisfied?

Mr. Kuntz: I always go by the majority.

Mr. E. H. Bloch: I think in a sense it is a calculated risk on everybody's part.

The Court: Then you all withdraw any objection to it?

Mr. A. Bloch: None.

Mr. Phillips: None.

Mr. Saypol: None.
Mr. E. H. Bloch: None for the defense.
The Court: All right, the record in clear.
Send for the jury, please.

(Jury in box.)

The Court: Ladies and gentlemen, there has been a slight delay this morning because of some points of law that came up, that counsel wanted to discuss with the Court, and I thought best that it be discussed outside the presence of the jury, so you will forgive us again for this [fol. 452] delay.

Proceed.

MAX ELITCHER, resumed the stand.

Cross-examination continued.

By Mr. E. H. Bloch:

Q. I am going to stand all the way back here now so that it might help you in keeping your voice up.

A. Yes, sir.

Q. Now, just to refresh your recollection for one moment, I think we had come to a point in my examination where we were talking about that visit or trip of yours to New York sometime in the latter part of '46 or early part of '47, when you came to Rosenberg's house?

A. That's right.

Q. And I think I was questioning you as to whether or not your wife accompanied you?

A. That is correct.

Q. Now, after this lapse from yesterday afternoon to this morning, have you done any thinking during that period?

A. Yes, slight; I haven't thought about the subject.

Q. Can you now tell us whether or not your wife accompanied you at that time to New York?

A. I don't recall, sir.

Q. Can you tell the Court and jury with definiteness whether or not on that trip you traveled at Government [fol. 453] expense?

A. Oh, no, I don't recall. I know that I made numerous trips to New York at Government expense. In addition, I did come up on leave. I don't recall on what occasion that particular visit occurred.

Q. Now, do you remember being asked by Mr. Saypol on your direct examination yesterday the following questions in connection with this particular trip that we are talking about now:——

Mr. Saypol: Just a minute, Mr. Bloch. Excuse me.
Mr. E. H. Bloch: I am sorry, I will refer to the page.
Mr. Saypol: That's right; that is what I seek.
Mr. E. H. Bloch: Page 338 and 339.

Q. (Reading) "Q. What did you say to him and what did he say to you?"——

Mr. E. H. Bloch: It is all the way down the bottom of the page, Mr. Saypol.
Mr. Saypol: I have it.

Q. (Continuing) "A. Well, I called him and said, well, I was in the city on official business. I believe, I called him and told him I would like to see him and he said to come over."

Now, that was only yesterday; isn't that correct?

A. That is correct.

Q. You gave that answer to Mr. Saypol's question, that [fol. 454] I just read?

A. Yes.

Q. Now, I ask you again whether or not, having heard the question propounded to you by Mr. Saypol on direct, and the answer that you gave to that question, whether that refreshes your recollection as to whether or not you came up here on that trip on official business?

A. No, I haven't been able to recall that for some time. This is not the first time that I had thought about the question or had been questioned concerning it. I have not been able to recall which, on what occasion it was. Otherwise I would have said so yesterday. That is why I said I thought it was official business, because I made more trips on official business than any other way.

Q. Well, didn't you tell us that you made this trip for the purpose of discussing this espionage business with Mr. Rosenberg?

A. Yes.

Q. And you say, despite that fact and despite the further fact that at or about that time you told Mr. Rosenberg that you were in a more receptive frame of mind, you nevertheless cannot tell the Court and jury, one, whether or not your wife accompanied you, and two, whether or not you came here on official business?

A. That is correct.

Q. You are hazy about that, aren't you?

A. No.

[fol. 455] Mr. Saypol: That is argumentative, if the Court please.

Mr. E. H. Bloch: This is cross, your Honor.

The Court: Well, I know, but he has answered it.

Mr. E. H. Bloch: All right.

Q. Now, when you were first brought down for questioning here to the Federal Building by the two FBI representatives that you told us about yesterday, that was in June 1950?

A. July.

Q. July, 1950?

A. July.

Q. Did the discussion or conversation between you and the FBI agents proceed by method of question and answer, as distinguished from a narrative form of statement by you, as to what you knew?

A. Well——

Q. About the matter?

A. It wasn't what you might say a formalized question and answer. They asked questions; I talked; they asked questions and I continued. It wasn't a direct answer to a question, as I remember it.

Q. Well, is it fair to say that you were asked questions and then you were given a high degree of latitude in continuing to respond, in unfolding your story?

A. Yes.

Q. And you had plenty of opportunity to say what you

thought was responsive to what the FBI agents were seeking to elicit from you; is that right?

A. Yes.

[fol. 456] Q. Nobody at that time tried to stop you in what you had to say?

A. That is correct.

Q. Now, did you at that time tell the FBI agents anything about this conversation, which you testified about, with Sobell, while you were driving with Sobell from your home to Catherine Slip, and where you stayed in the car and Sobell got out, and where Sobell is alleged, according to your testimony, to have said to you, "Rosenberg said not to worry about Bentley," or words to that effect?

A. I did not.

[fol. 457] Mr. Saypol: Just a moment. I object to the question and ask that the answer be stricken. The question consists of a series of questions not related. It is not clear on the record as to what counsel refers to or what the witness refers to.

The Court: Did you understand the question?

The Witness: I believe so.

The Court: All right. I will let it stand.

Q. Well,——

Mr. Saypol: Just a moment, please. I am not clear as to what it is the witness didn't tell the FBI.

The Court: All right. Re-read the question.

(Question read.)

The Court: Now did you understand that question?

The Witness: I believe so.

The Court: And did you understand that counsel is directing your attention to a particular subject matter? He is asking you whether with respect to that subject matter you ever told the FBI anything about the matter that he indicates in his question.

The Witness: I believe I did.

Mr. Saypol: Here is one of the things that strikes me as incongruous about the question: there has been no testimony from this witness that Rosenberg and he talked about Bentley. He testified that he talked with Sobell about that

[fol. 458] afterwards in the car. He didn't say that Rosenberg told him that.

Mr. E. H. Bloch: And I am not imputing anything like that.

Mr. Saypol: The question implies that. The question states that.

Mr. E. H. Bloch: I think the question is proper, your Honor, but I want to satisfy Mr. Saypol.

The Court: Now look, I want to tell you something: if there is something that you believe should be added at the end of your answer, which will explain in more detail for the Court and jury the thought you are trying to get across to us, you ought to do so.

The Witness: All right. I don't have anything.

By Mr. E. H. Bloch:

Q. Let us try to make it as simple as possible. Did you mention the name of Bentley when you were first brought down for questioning in June 1950 to this building to the FBI agent?

A. I did not.

Q. Did you tell the FBI agent anything about this automobile trip which you took with Sobell from his home to Catherine Slip? And that is the time you had just driven with your family from Washington.

A. I did not.

[fol. 459] Q. You did not?

A. No.

By the Court:

Q. Where did you say Catherine Slip is?

A. Well, on the East Side Drive adjoining the Journal-American building.

Q. Is that anywhere near Monroe Street?

A. Near Knickerbocker Village.

Q. Speak up.

A. I now know it is near Monroe Street or Knickerbocker Village.

By Mr. E. H. Bloch:

Q. Now as a matter of fact, Catherine Slip is so near that Knickerbocker Village project that you can see it from Catherine Slip, can you not?

A. Well, there are buildings in the way. I don't know. At that time it was night and I hadn't any idea where I was anyway.

Q. You had been to Knickerbocker Village prior to that time when you went with Sobell in his automobile to Catherine Slip?

A. I had been there prior, yes. But I had no idea where it was in relation to where I was then.

Q. It is a big development, isn't it?

A. Yes.

Q. Now, at the time you were brought down here for the first time for questioning and after the questioning proceeded the way you described and your answers were [fol. 460] not interrupted and so forth, did you sign any statement?

A. Yes, I did.

Q. Who prepared that statement?

A. Well, it was prepared by me but written by one of the FBI Agents.

Q. See if we understand you correctly; You said in words to one of the FBI agents what you wanted to say and he wrote out what you told him to write out; is that correct?

A. Yes.

Q. And the main body of the statement is in the FBI's handwriting but you appended your signature at the end?

A. That is correct.

Q. Now, is there any other incident that you have testified to on direct examination and on cross-examination up to now which you did not disclose to the FBI at the time you made that first statement?

Mr. Saypol: I object to that question as to form.

The Court: I will sustain it.

Mr. Saypol: As a matter of fact there were other things unrelated to this case that this witness told the FBI.

Mr. E. H. Bloch: Now I object to any statement.

The Court: I sustain it.

Q. Did you tell the FBI about the June 1944 incident?

A. Yes.

[fol. 461] Q. But you did not tell them that it occurred in June, 1944; is that not correct?

A. That is correct. I was not clear.

Q. In fact, you told them your recollection is that it occurred in the latter part of 1943 or the early part of 1944, is that correct?

A. That is correct.

Q. Did you tell them about the next meeting after June 1944 that you had with Rosenberg?

A. Yes, I did.

Q. You did tell them that?

A. About the next meeting.

Q. Do you know which next meeting I am referring to?

A. I remember my first testimony, yes. Tell me which meeting it was.

Q. Suppose you tell us now, what was the next time after June 1944 that you saw Rosenberg?

A. In the middle of the summer at his home.

The Court: In what year?

The Witness: In 1944.

Q. Did you tell the FBI men at that first meeting about that summer incident?

A. About the summer incident?

Q. Yes.

A. Yes, I did.

Q. You told them that you came up to New York?

A. Yes.

Q. And that you had dinner with Rosenberg and some [fol. 462] other people?

A. Yes.

Q. Did you tell them about the next time you saw Rosenberg?

A. Yes.

Q. And do you remember the next time you saw Rosenberg?

A. In the middle of 1945, yes. The summer of 1945.

Q. Where was that?

A. At his home.

Q. Is that the time you slept over?

A. Yes.

Q. Did you tell the FBI man and was it incorporated in

your statement that you came up here in the summer of 1945 and slept over at the Rosenberg home?

A. I believe I did, yes.

Q. Are you sure?

A. Yes. I don't recall everything in that statement. I told them of all these incidents and I believe I told them about that one too.

Q. After you signed that statement did you read it?

A. Yes.

Q. That day?

A. Yes.

Q. Did you read it at any time subsequent to that or did you read a true copy of it at any time subsequent?

A. I don't believe I have looked at it since. I didn't look at it since, no.

Q. Was it ever shown to you?

A. No.

Q. Did you ever discuss the contents of it with anybody?

[fol. 463] A. The specific contents of that one?

Q. Yes.

A. No.

Q. Well, when you signed the second statement wasn't there some reference to what you had said in your first statement?

A. Yes.

Q. And when you discussed the third statement wasn't there some reference to what you had said in your second statement and your first statement?

A. Yes.

Q. So that you did have the contents of that statement brought home to you after you signed it on that first day you came down here in June 1945?

A. Well, it might not have been in the terms of what the statement said, but in terms of what I was telling and what I knew. References might have been made to the statement as things that were said.

Q. That is right. By whom?

Mr. Saypol: Let him finish, please.

Q. I am sorry.

A. By the agent and by people in Mr. Lane's office.

By the Court:

Q. But after that first occasion when you read it and signed it, were you ever given that first statement again to read?

A. No, not to read. There were refinements made in the first statement, and obviously there were references made [fol. 464] to it.

Q. But you were not handed the first statement?

A. No.

Q. And have the first statement before you when you made the second statement?

A. No.

Mr. E. H. Bloch: The only objection I want to make at this time is the witness's use of the word "refinement". The question whether or not it was a refinement or not——

The Court: It will stand.

Mr. E. H. Bloch: Or a substantial variation. I respectfully except.

By Mr. E. H. Bloch:

Q. Was that statement that you signed the first time you came down here physically before anybody who was discussing that statement with you subsequently?

A. Oh, yes.

Q. Who had it before him?

The Court: I don't see the materiality of this.

Mr. E. H. Bloch: I am getting to something, your Honor.

The Court: I think you are going into unusual detail and I have given you wide latitude. What difference does it make if somebody else had it before him?

Mr. E. H. Bloch: If the Court please, I don't hesitate [fol. 465] to tell the Court, and I am sure the Court is keen enough to see it long before I even think about it, that I am trying to lay a foundation for showing a discrepancy between what the witness has testified to now and what he told the authorities on the previous occasions.

The Court: I assume you are trying to do that. You haven't shown it as yet.

Mr. Saypol: I move to strike that from the record as argumentative.

The Court: No, no. I have asked.

Mr. E. H. Bloch: It is a question of law now.

The Court: Now that is all I will have on the subject. I will have no more on the subject. I know what you are trying to do. I still don't see how it helps if somebody else had the statement before him.

Mr. E. H. Bloch: Well, if the Court please, I am going to follow that up.

The Court: Please follow it up and bring this phase of it to a conclusion.

By Mr. E. H. Bloch:

Q. Who was the first one who suggested the name "Bentley" to you?

A. I believe——

Mr. Saypol: Just a moment. I object to the question as to form. There was no suggestion. There was a direct conversation.

[fol. 466] The Court: I sustain that.

By the Court:

Q. Did anybody suggest Bentley to you, or did you state the name of your own volition?

A. Well, I don't recall. I believe that someone during some interrogation said did I have anything to do with Bentley, but it wasn't in relation to this particular testimony that I gave about that trip.

By Mr. E. H. Bloch:

Q. Now, when that someone asked you whether you had anything to do with Bentley, had you already stated to the FBI anything about this conversation that you had with Sobell in his automobile where you claim that he said to you that Rosenberg had said that he wasn't worried about Bentley?

A. I don't think so.

Q. In other words, the word Bentley or the name Bentley was projected into your mind by somebody either in the FBI or on the prosecuting staff of the United States Government, is that correct?

Mr. Saypol: I object to that.

The Court: I will sustain that.

Mr. E. H. Bloch: I respectfully except.

Q. Well, was that somebody who mentioned the name Bentley connected with the prosecutor's office?

A. Yes.

[fol. 467] Q. Who was it?

A. I don't recall. I am sure it was one of the agents. It was during the questioning period.

Q. Well, in other words, you are now saying that it was a member of the FBI?

A. Yes.

Q. It was one of the two agents who brought you down here for the first time?

A. I had been questioned by more than those two.

Q. I didn't say you weren't; I am just trying to direct your attention to try to refresh your memory as to a particular name now.

A. I don't remember.

Q. Was it Mr. Norton of the FBI?

A. No—I don't remember any of them.

Q. Do you know Mr. Norton?

A. Yes, I do.

Q. Have you been questioned by him?

A. Yes.

Q. Was it Mr. Harrington of the FBI?

A. I don't remember.

Q. You don't remember who mentioned the name Bentley?

A. That is correct.

Q. Do you remember when it was first mentioned?

A. I do not.

Q. Pardon me?

A. I do not.

Q. Do you remember when you first disclosed to the

authorities this particular conversation that you had with Sobell where the name Bentley was mentioned?

A. Yes.

[fol. 468] Q. Is that incorporated in your second statement?

A. Which is my second statement?

Q. Well, maybe I ought to go back over that part of the testimony. Do I understand that you signed three statements?

A. Yes.

Q. All right. Now when I say "second," I mean the second of those three.

A. No.

Q. So that in the first statement you didn't mention this particular conversation where Bentley's name was mentioned by Sobell and in the second statement you didn't mention this particular conversation where Bentley's name was mentioned? Is that an accurate statement?

A. That is correct.

Q. Now, after having called to your attention the fact that this Bentley name was not incorporated in your first or second statement, would that now refresh your recollection as to when you mentioned this conversation about Bentley for the first time to the authorities?

A. I don't understand that.

Q. All right. When did you make that first statement?

A. The first time I was called down here.

Q. When did you make your second statement?

A. The next day.

Q. When did you make your third statement?

A. Quite a bit later. Some months later.

[fol. 469] Q. You made that first statement after you had consulted a lawyer, is that right?

A. That is correct.

Q. After you had already retained a lawyer?

A. Yes.

Q. And after you had been interrogated a number of times by FBI agents and members of the prosecuting staff, is that right?

A. Yes.

Q. Had you made that statement prior to the time you testified before the grand jury here?

A. Yes.

Q. Does that refresh your recollection as to when you made your third statement?

A. I made my third statement much later than my appearance before the grand jury.

Q. I am sorry, I thought you said the opposite. You testified before the grand jury and then you made a third statement?

A. Yes.

Q. Let us go back for just a moment. When did you testify before the grand jury the first time?

A. The middle of August.

Q. Did you testify on more than one occasion before the grand jury?

A. Yes.

Q. How many occasions?

A. Two times. Twice.

Q. Now, the first one was in August. I believe August 15th?

A. 1950.

Q. After you came back from your vacation?

A. Yes.

[fol. 469a] Q. When was the second time?

A. About a month ago. Perhaps a little longer. About a month ago.

Q. About a month ago?

A. Yes.

[fol. 470] Q. That would be January or February, 1950, approximately?

A. Yes.

Q. 1951, I am sorry.

A. 1951.

Q. How many months or how many weeks or how many days after you first testified before the grand jury did you sign that third statement?

A. It was sometime near the end of the year, the end of 1950.

Q. Just about three months ago?

A. Well, at least that, yes.

Q. Now, when you testified before the grand jury for the first time did you mention the word "Bentley"?

A. Well, I don't remember whether I actually testified to it before the grand jury, whether that question was asked. I had——

The Court: You had what?

The Witness: I had already told the FBI about this trip.

Mr. E. H. Bloch: I move to strike out the answer as not responsive.

The Court: I will let it stand.

Mr. E. H. Bloch: Well, I am going to ask it again, if your Honor please.

Q. I am going to ask you a very simple question. Did you mention the name Bentley at any time during your interrogation before the grand jury the first time you [fol. 471] testified before the grand jury?

The Court: Don't answer. It has been answered. He said he wasn't asked, but he had already told the FBI about it before.

Mr. E. H. Bloch: I am not asking him——

The Court: It has been answered. Let us have no further argument.

Proceed, Mr. Bloch. He said no he wasn't asked before the grand jury.

Q. And you didn't tell them? You didn't tell that name before the grand jury?

Mr. Saypol: That is repetitious.

The Court: He said he didn't tell it because he wasn't asked before the grand jury.

Mr. E. H. Bloch: I just wanted to get that in the record.

Q. Now, do you remember ever attending a social function at the Rosenbergs' house during Christmas week of 1947?

A. 1946. I did attend one in 1946, if I may correct you.

Q. And do you remember particularly when that party was held?

A. Yes. In Christmas week of 1946.

Q. Did you tell us anything about that visit to Rosenberg's house on direct examination?

A. No.

Q. You forgot about that, didn't you?

[fol. 472] Mr. Saypol: Just a moment. I object to that. The witness——

The Court: Yes, I will sustain that.

Mr. E. H. Bloch: I respectfully except.

The Court: He wasn't asked about it, if I remember, and it might have been nothing material to the Government's case. There is a certain inference in your question that he deliberately withheld it.

Mr. E. H. Bloch: I think if your Honor please, and with all due respect to your Honor that the jury has to determine whether his failure—oh, I am sorry, I will even be more specific; in cross-examination of the witness I was asking him particularly about certain meetings and he didn't state to the Court or to the jury about this particular meeting.

The Court: But I don't think you had ever gotten to that point. I think when you finished yesterday you were in 1945 some place.

Mr. E. H. Bloch: Well, if your Honor please——

The Court: Well, let us not argue.

Mr. Bloch: I see that we don't see eye to eye on it and I take an exception to your Honor's ruling.

The Court: I am not interested whether you see eye to eye with me on it. I have made a ruling. Please proceed.

[fol. 473] Mr. E. H. Bloch: All right. I take an exception.

Q. Now, I ask you, was your wife present at the time you were at this social function at the Rosenbergs' house in Christmas week or during Christmas week of 1946?

A. Yes.

Q. Was it 1946?

A. I am sure it was 1946.

Q. It is your recollection it was 1946?

A. Yes.

Q. You didn't sleep over with your wife at the Rosenbergs that night, did you?

A. No.

Q. Now, was there any other occasion where you were at the Rosenbergs' house attending some social function during Christmas week in subsequent years?

A. No.

Q. Just that one time?

A. Yes.

Q. But that you remember?

A. Yes.

Q. Did you tell the FBI about that visit to Rosenberg's home?

A. Yes.

Q. When?

A. The first time.

Q. Did you ever meet Mrs. Ruth Greenglass at the office of your attorney?

A. No, I did not.

Q. Were you ever introduced to her?

A. No.

Q. At any time?

A. No.

Q. And at any place?

A. No.

Q. Would you recognize her if you saw her?

A. No.

[fol. 474] Q. Did you discuss the subject of your testimony or anything relating to the issues in this case with anybody including your wife, who is going to be a witness in this case, or it was suggested might be a witness in this case?

A. Except for my attorney, no.

Q. Except for your attorney?

A. No.

Q. You have never seen anybody who might be a witness?

A. Oh, I have seen people who might be a witness.

Q. Were you introduced to them?

A. No. I will answer that question as no.

By the Court:

Q. Do you know the defendant Greenglass?

A. No, I don't. My answer is I don't know who is going to be a witness. That is all.

Q. But you say you don't know the defendant Greenglass?

A. No, I don't know Greenglass or his wife.

By Mr. E. H. Bloch:

Q. When did you first find out that your attorney Mr. Rogge, and his associates represented Mr. and Mrs. Greenglass?

A. The day I went to their office and asked whether——

Q. Who recommended you to Mr. Rogge's office?

A. No one.

Q. Had you read about David Greenglass at the time [fol. 475] you first went down to consult with Mr. Rogge?

A. Yes.

Q. Or Mr. Fabricant, as the case may be?

A. Yes.

Q. Did you discuss his retainer in terms of his having represented or already having been retained as the attorney for Greenglass?

A. No.

Q. Did it ever enter your mind that was something that should have been said about Mr. Rogge's already representing a defendant in this case?

Mr. Saypol: I object to that.

The Court: What is the relevance? I don't see its relevance at all. I will sustain it.

Q. Did Mr. Rogge tell you that David Greenglass was a defendant in this case?

A. Well, Mr. Fabricant told me.

Q. That David Greenglass was a defendant in this case? Did he tell you that?

A. The case was not mentioned as a case. They told me they were defending Mr. Greenglass.

Q. And at that first conversation with Mr. Fabricant was the name Julius Rosenberg mentioned?

A. Yes.

Q. And was it brought home to your attention that Julius Rosenberg was the brother-in-law of David Greenglass?

A. Yes.

Q. Now, at the time you went down to see Mr. Rogge, Mr. Rosenberg had already been arrested, had he not? [fol. 476] A. Yes.

Q. And Mr. Greenglass had already been arrested at least a month previous?

A. Yes.

Q. Through the occasion?

A. Yes.

Q. And had you read in the newspapers of the purported connection between David Greenglass and his brother-in-law Julius Rosenberg?

A. Yes.

Q. And you didn't ask Mr. Rogge or Mr. Fabricant or any member of this firm anything about any duality—if I use any words that seem technical, correct me—any duality in representing you on the one hand and a defendant in this very same situation on the other?

Mr. Saypol: I object to it.

The Court: Overruled. He may answer.

A. Well, can I answer that in narrative form as to what happened?

The Court: Sure.

The Witness: Well, we went down to Mr. Rogge's firm with our recommendation. We got there and we were referred to Mr. Goldman of the firm, and Mr. Fabricant was called in too, and we told them what our position was, that we were attached—we had been questioned.

Q. When you say "we", you mean you and your wife?

A. Yes. My wife was with me. We wanted counsel in regard to some implication in these affairs of Rosenberg. [fol. 477] They told us then that they were employed by Mr. Greenglass, which was a great surprise to us. We almost left—we felt it was time to leave because there might be, as you say, a duality. The lawyers apparently went outside and discussed the matter and they came

back and said they felt that they could handle our case if there was no conflict of interest, and we were quite happy to have them.

Q. Now, prior to the time that you went down to Mr. Rogge's office was any mention made here in the Federal Building by anybody, whether it be a Federal man or whether it be a member of Mr. Saypol's staff or whether it be you, about Mr. Rogge?

A. No.

Q. Was his name ever mentioned?

A. No.

Q. Prior to the time——

A. No.

Q. You went down to consult with him and eventually retained him?

A. No.

Q. Now, I think you told us on direct examination that just a few days ago you terminated your employment with the Reeves organization?

A. That is correct.

Q. And you are presently unemployed?

A. That is correct.

Q. Were you fired?

A. Well, I was asked to resign.

Q. When was the first time that you had any knowledge or information that your employer was considering [fol. 478] terminating the relationship?

A. Two weeks——

The Court: Go ahead.

The Witness: Two weeks prior to that.

Q. Did you buy a new automobile within the last two weeks?

A. Yes.

Q. When you bought that automobile did you have any worry in your mind about any future prosecution by the Government against you?

Mr. Saypol: I fail to see the relevancy.

Q. Because of a possible charge of perjury?

Mr. Saypol: I fail to see the relevancy.

The Court: I will let him answer.

Mr. Saypol: Will your Honor hear me?

The Court: You say there is no relevancy. I am inclined to agree with you but I am going to let him answer.

Mr. Saypol: Will your Honor let me state on the record my objection? I think the cross-examination is taking a turn which is wholly unfair to the prosecution. First there is an implication that the United States Government recommends lawyers and witnesses to defendants.

The Court: Well you had better be prepared, Mr. Saypol for many, many more implications by the defense in this trial. That is not unusual, but as I have told the jury before they are not to decide this case based on in-
[fol. 479] ferences from questions, but from replies of the witnesses.

Mr. Saypol: Your Honor will remember that it was a man like Al Smith who once said you can stand getting some things but you can't get used to them. I don't think it is fair.

The Court: Yes. Alfred E. Smith also said let us take a look at the record.

Mr. E. H. Bloch: I assume your Honor is permitting the witness to answer.

The Court: Yes, I am.

The Witness: The question was whether I was worried? Yes, I was.

Q. You bought a car nevertheless?

A. Yes. I felt that it was no difference in money. If I was to be prosecuted I could transfer it into funds. If I was not, I would have the car.

Q. Did you pay cash for the car?

A. No. It is on time payments.

Q. Did you pay any cash?

A. Yes.

Q. Did you pay at least one-third of the purchase price?

A. Yes.

Q. How much was the purchase price?

A. About $1,900.

Q. So you did pay somewhere in the neighborhood
[fol. 480] of over $600. cash?

A. Yes.

Q. Tell me, Mr. Elitcher, have you ever been treated by a psychiatrist?

A. Yes.

Q. When did you first consult a psychiatrist?

A. In the summer of 1947.

Q. Did you then undergo some treatment?

A. I don't know what you mean by treatment.

Q. Well, I am using it in the very loose sense of the word.

A. Yes.

Q. You went to a psychiatrist who was supposed to be a physician of sorts, dealing with mental disturbances. Did he consult with you and discuss your problems with you and treat you the way a psychiatrist usually deals with patients who seek advice and guidance?

A. Yes.

Q. How long did you continue being treated by a psychiatrist?

By the Court:

Q. Did the treatment consist of a discussion with the psychiatrist?

A. Yes.

Q. It didn't include any so-called shock therapy or anything of that character?

A. No, there was no therapy at all. No shock or other therapy involved.

By Mr. E. H. Bloch:

Q. How many times in all did you see a psychiatrist since 1947?

A. Well, I saw a psychiatrist in Washington for about [fol. 481] a year. That was in the summer of 1947 to the summer of 1948, and I have seen one here for a similar period.

Q. When you say you saw a psychiatrist in 1947 and 1948. I think we would like to find out how continuous were those visits.

A. Approximately twice a week excluding perhaps vacation and holidays.

Q. That was for an entire year?

A. That is correct.

Q. And is it not a fact that at or about that period your wife also underwent psychiatric treatment?

A. Yes.

Q. And do you know of your own knowledge, how often she consulted a psychiatrist and was given treatment?

A. It was either two or three times a week. Approximately the same treatment.

Q. 1947 and 1948?

A. No. She had been going prior to that time.

Q. How long prior to that time?

A. Almost six months prior to that.

Q. Now then there came a time of course, in June 1948 or July 1948 when you left Washington with your family?

A. Yes.

Q. And came up here to New York?

A. Yes.

Q. And you have been a resident of Flushing ever [fol. 482] since, is that right?

A. Yes.

Q. Now, when did you again get psychiatric treatment?

A. Well, it was again in the summer of 1948-1949.

Q. About a year later?

A. Yes.

Q. A year elapsed between the time you terminated going to a psychiatrist and getting psychiatric treatment in Washington and the time when you commenced here in New York?

A. Yes.

Q. Getting treatment?

A. Yes.

Q. In the summer of 1949?

A. That is correct.

Q. And how long did you continue being treated by the psychiatrist?

A. Until July 1950.

Q. And how often did you visit the psychiatrist during that latter period that you are talking about?

A. Twice a week.

Q. How long were the sessions usually?

A. Three-quarters of an hour.

Q. And how about your wife?

Mr. Saypol: Now I think at this stage I will object to it. I have allowed counsel——

Mr. E. H. Bloch: This is my last question.

Mr. Saypol: That is all right, but——

The Court: If it is the last question let us get it.

[fol. 483] Mr. E. H. Bloch: Be thankful that you are getting rid of me.

Q. Did your wife also resume her psychiatric treatment after she got back to New York?

A. Yes.

Q. Did both of you go to the same psychiatrist?

A. No. That is not done.

Mr. E. H. Bloch: Now I am through with this witness temporarily. I say temporarily because I don't want to make any request at this time with respect to the statements until I give my colleague here an opportunity to cross-examine. He made a list of things which I might not have brought out. So I hope your Honor will reserve to me the right to do that.

The Court: We will take a short recess at this point.

(Short recess.)

[fol. 484] (Jury in box.)

The Court: Any cross-examination, Mr. Bloch, Sr.?

Mr. A. Bloch: No, I am not cross-examining this witness.

The Court: Very well.

Are you going to cross-examine, Mr. Kuntz?

Mr. Kuntz: Yes.

The Court: You are going to cross-examine this witness?

Mr. Kuntz: Yes.

By Mr. Kuntz:

Q. Mr. Elitcher, I believe that you told this jury that from 1939 to 1941 you and Sobell lived together a great deal at that time?

A. Yes.

Q. I believe you also told this jury that between those dates, during that time, you worked for the Bureau of Ordnance, Navy Department?

A. Yes.

Q. And Sobell also worked for the Navy Department?

A. Yes.

Q. Bureau of Ordnance?

A. Yes.

Q. Did similar work?

A. Similar, yes.

Q. During all that time, Mr. Elitcher, '39 to '41, did Sobell ever ask you for any document belonging to the United States Government?

A. No.

Q. During all that time, Mr. Elitcher, did Sobell [fol. 485] in any way offer you any documents belonging to the United States Government?

A. No.

Q. Did Sobell, by word or action or intimation of any kind, suggest to you that you take United States Government material?

A. No.

Q. Sobell was a studious sort of a fellow, was he not?

A. Yes.

Q. He is today, is he not?

A. Yes.

Q. And he has become known as somewhat of an expert in his line, has he not?

A. Yes.

Q. As a matter of fact, up at General Electric he did very important work, did he not?

A. Yes.

Q. So that when you visited General Electric, you didn't only visit Sobell as a friend, but you visited him in connection with your work, did you not?

A. No,— I mean—visit him? No, the answer stands.

Q. You scientists were working on various projects for the United States Government, were you not?

A. Yes.

Q. By the way, a great deal of Morton Sobell's work was research, was it not?

A. Yes, I think so.

The Court: Speak up.

A. Yes, I would say so.

Q. And a scientist, in doing research, in order to do a good job for his employer or for the United States [fol. 486] Government or for himself, looks into every angle that might have some relationship to his work, does he not?

Mr. Saypol: I object to that.

The Court: I will overrule it.

Mr. Saypol: That is argumentative.

The Court: I will overrule it.

A. Yes.

Q. So that when Sobell asked you in Schenectady whether there was any material on certain phases of work, you took it that he was asking you as a scientist, did you not?

A. No.

The Court: When was that in Schenectady, what year?

The Witness: '46.

Q. Sobell's job also for the Government was to get you personnel, was it not?

A. No, not that I know of.

Q. Don't you know about that?

A. Well—

The Court: Was it on that visit in Schenectady that Sobell asked you to see Rosenberg?

The Witness: Yes—no, not that one, but a visit.

Mr. Kuntz: I object to the interjection by the Court.

The Court: Your objection is overruled. I will ask questions whenever I think I ought to.

[fol. 487] Mr. Kuntz: Well, it seems to——

The Court: You proceed. Let's not argue the point.

Q. Well, let's take that up; let's take that up. In June, 1944, you said you had a conversation with Rosenberg?

A. Yes.

Q. He made proposals to you?

A. Yes.
Q. You did not accept those proposals, did you?
A. I——
Q. Did you accept them?

Mr. Saypol: Won't counsel give the witness a chance to answer?
Mr. Kuntz: Well, it is a very easy thing to answer whether a man accepted or not.
The Court: Give him a little chance to think.

A. Well, it is a difficult yes or no answer. I accepted, in that I didn't reject the idea, and I was going along with it, and I thought I might——
Q. You accepted——

The Court: Wait a minute.
Mr. Kuntz: I am sorry. When I am wrong I will admit it.

A. (Continuing) So it was I accepted, yes, but I qualified it.
Q. You accepted it, yes, but you qualified the acceptance. [fol. 488] A. That is correct.
Q. Well now, the invitation to you was to get Government documents, was it not?
A. Yes.
Q. Now let's see whether you accepted it with or without qualifications. Did you go and get any Government documents?
A. No.
Q. I am talking now about the '44 conversation?
A. No.
Q. As the result of that '44 conversation, you did not, did you?
A. No.
Q. Did you communicate in any way, after Rosenberg's conversation with you, with Sobell?
A. Communicate?
Q. Yes.
A. I spoke to him yes.
Q. When?

A. I spoke to him—I went on vacation with him in '44.
Q. I didn't ask you that.
A. I spoke to him then.
Q. I asked you, right after you had the conversation with Rosenberg in early June '44, did you communicate in any way with Sobell?
A. I don't recall any such communications.
Q. Did you check in any way as to whether Rosenberg, as you claim, connected Sobell in the conversation, did you communicate with Sobell to find out and check on it?
A. I have said——
Q. Did you?
[fol. 489] Mr. Saypol: Please let him finish.

Mr. Kuntz: No, I submit I am entitled to answers to my questions and not to answers that the witness may want to give to something else. I think that is a fair way to conduct the trial.
The Court: Will you answer the question?

A. Yes.
Q. You did communicate with Sobell?
A. I spoke to him.
Q. I am talking about——
A. I did not communicate.
Q. I am talking about right after the early June conversation, did you communicate with Sobell?
A. No.
Q. Did you check with him as to whether he was, whether his name was properly mentioned?
A. No.
Q. In that conversation?
A. No.
Q. Did you write to him?
A. No.
Q. About it?
A. No.
Q. Did you telephone him about it?
A. No.
Q. You waited for some three months to take a vacation of a week with Sobell, is that right?
A. Yes.

Q. Well, you didn't take that vacation purposely to check on him did you?

A. No.

Q. So that any conversation you had with Sobell during that week was purely accidental, was it not, in relation to the subject matter of this case?

[fol. 490] Mr. Saypol: That is not the testimony.

Q. Isn't that correct?

Mr. Saypol: That is not the testimony and I object to the question.

The Court: I will overrule the objection. I think the witness can answer.

Q. Isn't that correct?

A. Will you repeat the question?

The Court: Reread the question back.

(Question read.)

The Court: What do you mean by that, "accidentally with respect to time"?

The Witness: Well, I had determined I would mention it when I saw him next. Now, if I didn't see him until a few months later, I would have mentioned it then.

By Mr. Kuntz:

Q. And when you did mention it, Sobell was angry, was he not?

A. Yes.

Q. Afterward, you didn't see Sobell for some time, did you?

A. I don't remember when I saw him next. It would have been for some time.

Q. Well, didn't you see him next up in Schenectady, in '46?

A. Yes. I saw him prior to that time, too.

[fol. 491] Q. You did see him prior to that?

A. I saw him in '45.

Q. When?

A. At his wedding.

Q. Did he say anything to you about getting documents from the United States Government?

A. No.

Q. Did he ask you whether you had gotten documents from the United States Government for anybody else?

A. No.

Q. Nothing was talked about United States Government documents, was it?

A. No.

Mr. Saypol: Is counsel referring to the wedding?

Mr. Kuntz: Counsel will allow the record to stand as it is.

Mr. Saypol: Excuse me. I am sorry; I shouldn't have addressed myself to counsel. I address myself to the Court. Is counsel referring to the wedding as the place where there was no discussion about getting Government secret documents?

The Court: Do you understand——

The Witness: Yes, that is what I understood.

The Court: —that to be the fact?

The Witness: Yes.

Q. And then the next time you saw Sobell was in '46, up in Schenectady; is that right?

A. Yes.

[fol. 492] Q. Sobell didn't invite you up there, did he?

A. No.

Q. Sobell didn't call you in between his wedding in '46, did he?

A. Well—no, I don't believe so.

Q. Sobell didn't write to you between his wedding in '46, did he?

A. No.

Q. Now, on each occasion that you had a conversation with Rosenberg or with Sobell, where they made invitations to you, did you accept those invitations to commit espionage?

A. I accepted the invitations, yes.

Q. Did you get any documents from the United States Government?

A. No.

Q. Did you hand any documents of the United States Government to Sobell?

A. No.

Q. Did you hand any United States documents to anybody in this world, belonging to the United States Government?

A. Not unauthorized.

Q. I am talking about illegally?

A. No.

Q. Did I understand that what Sobell told you in '46 up in Schenectady was, "See Rosenberg"; is that right?

A. Yes.

Q. The words, I mean, in substance; is that right; "See Rosenberg"?

A. Yes.

Q. At the time that he said "See Rosenberg", did he ask you for any documents?

A. Well——

[fol. 493] The Court: Did he tell what to see Rosenberg about?

The Witness: Well, he said—yes, in regard to these pamphlets, as he questioned about these pamphlets, in relation to that he said, well, why don't you go see Rosenberg?

Q. Well now, Mr. Elitcher, you had told Sobell that the pamphlet that had been prepared was unimportant, did you not?

A. Yes.

Q. As a matter of fact, I understood you to say that you told Sobell the pamphlet wasn't even finished?

A. Correct—no, I am sorry. That other pamphlets weren't important. This particular one was not completed.

The Court: I am confused now. What pamphlets are you talking about?

The Witness: Well, first he asked about reports, and I said they were unimportant. Then he asked about this particular Ordinance pamphlet, which is a complete description of the system, and I told him about it being not completed.

The Court: Was that important or wasn't it?

The Witness: That was important.

The Court: And what pamphlet did he ask you to see Rosenberg about?

[fol. 494] The Witness: About that.

By Mr. Kuntz:

Q. That was a pamphlet that wasn't prepared yet?

A. It wasn't completed yet.

Q. You hadn't seen that pamphlet, had you, since it hadn't been completed?

A. No.

Q. The pamphlet wasn't available to be taken way from the United States Government as yet, was it?

A. No.

The Court: Did you know the contents of the pamphlet?

The Witness: The contents, no. There was—I knew what would be in such a pamphlet.

Q. Well, did Sobell ask you in Schenectady what was going to be in that pamphlet, did he?

A. No.

Q. But he said, "See Rosenberg"?

A. Yes.

Q. And that you took to mean about this pamphlet, which was not yet prepared and which you would not in any event be able to take away from the United States Government; is that the pamphlet?

A. Yes.

Q. Isn't it a fact, Mr. Elitcher, that Sobell, at Schenectady and later on, when he came to New York and started to work for Reeves, that he was in a position, an important position, overseeing work of others, in addition to doing his own work?

A. I don't know that to be a fact, at Schenectady.

[fol. 495] Q. How about Reeves?

A. Reeves, he was, yes.

Q. And didn't Morton Sobell tell you, Elitcher, that he was always on the lookout for young engineers, young students, who could fit into the work that he was doing?

A. He told me that at Reeves, yes.

Q. At Reeves, I am talking about Reeves.

A. Yes.

Q. As a scientist, isn't that what every scientist does when he is working on projects, looking for promising young men to work with him?

A. I would say yes.

Q. Talk up please. Let the jury hear you.

A. Yes, I would say yes.

Q. By the way, you use the word "progressive". "Progressive" is also used in the scientific world as people with progressive ideas in science, isn't that it? Talk up?

A. I hadn't answered. Yes.

Q. Let me recapitulate a little bit. Check me if I am wrong. For two years you and Sobell worked together and lived together in Washington and did secret Government work; is that correct?

A. Classified Government work.

Q. Well, classified, O.K. To me it is all the same; classified Government work. He didn't bring home any documents; he didn't ask you for any documents; is that right?

A. That is correct.

[fol. 496] Q. Then he went off to college; he wanted to study some more, did he not?

A. Yes.

Q. He took a year out of his working life to go to Michigan, was it?

A. Yes.

Q. And he took his master's degree there; is that correct?

A. Yes.

Q. And when he graduated, when he got his master's degree, he went to work for General Electric, did he not?

A. Yes.

Q. And up in General Electric you knew he was doing important work, did you not?

A. Yes.

Q. He never turned over any document to you?

A. No.

Q. He never asked you for any document, outside of this unprepared pamphlet?

A. That is correct.

The Court: I want to get one thing clear right here and now.

Mr. Kuntz: I am sorry, I didn't hear you.

The Court: Just a moment.

By the Court:

Q. Did I understand you to say on direct examination, and is it true or is it false, that Sobell asked you while he was employed at the Reeves Instrument Company, if you knew any engineering students whom it would be safe to ask for espionage material?

A. Yes.

[fol. 497] Q. Well, didn't I understand you to say on cross-examination that he had merely asked you for young engineering students who would be helpful in his work at Reeves?

A. That was in addition. He had asked me that, too. That was a different question. May I amend that, sir? He spoke—he told me that he was trying to get engineering students. I don't recall that he specifically asked me if I knew of any for work at Reeves, but he did show an interest in getting people in.

By Mr. Kuntz:

Q. Well, the answers that you gave to my questions were truthful answers, were they not?

A. In substance, yes.

Q. And to continue with the recapitulation, up in Schenectady, in his important work, Sobell didn't offer you any documents, did he?

A. No.

Q. Did he offer you any documents to take over to Rosenberg?

A. No.

Q. You were going to see Rosenberg, were you not?

A. Yes.

Q. Sobell asked you to see Rosenberg, didn't he?

A. Yes.

Q. He didn't offer you any documents?

A. No.

Q. Did he tell you any secrets to tell Rosenberg?
[fol. 498] A. No.
Q. I just want to spend a few minutes' time, if you please, on this occasion when you came up from Washington in the car with your family, and I think that was in June of '48; am I right?
A. It was in July.
Q. July '48, right?
A. Yes.
Q. You were scared to death at that time, were you not?
A. Yes.
Q. You have been scared to death ever since, have you not?
A. Yes.
Q. Talk up. Let these people hear you.
A. Yes.
Q. You had determined that you were going to save yourself, hadn't you?
A. No.
Q. Well, you want to save yourself, don't you?
A. Yes.
Q. And you came in the car to Sobell's house and told him that you had been followed by FBI agents; right?
A. I told him I had been followed. I didn't know who was following me.
Q. Well, you assumed they were FBI agents, didn't you?
A. Yes.
Q. I am not quibbling with you. Correct me if I make any wrong implication here.
A. I just want to get it straight.
[fol. 499] Q. Sobell got angry, did he not?
A. Yes.
Q. He said you shouldn't have come to his place; is that right?
A. Yes.
Q. At that time you knew Sobell was working at Reeves, did you not?
A. Yes.

Q. You knew Sobell was working on important stuff at Reeves, didn't you?

A. Yes.

Q. You knew Sobell was working on Government work at Reeves, didn't you?

A. Yes.

Q. And Sobell told you in July of '48, "Max, you shouldn't have come here", didn't he?

A. Yes.

Q. You didn't offer to take the family and go to a hotel, or anything like that, did you?

A. No.

Q. You insisted on staying, did you not?

A. Yes.

Q. And finally Morton Sobell allowed you to stay with your family; right?

A. Yes.

Q. You were pretty tired from this trip, were you not?

A. I was tired, yes.

Q. And you were worried, too, were you not?

A. Yes.

Q. Well, you told this jury, I believe, that Morton Sobell said he was tired and asked you to drive his car over to—what is the name of that—Catherine Slip?

A. Right, to the East Side. I didn't say that.

Q. What did you say?

A. I said that he said that he was tired and wanted [fol. 500] me to accompany him in case he could not drive back.

Q. Well, do you know how far it is from Flushing to Lower Manhattan?

A. Yes.

Q. How far is it, about?

A. About 10 miles, maybe a little more.

Q. And Morton Sobell told you that he was so tired that he wanted you to accompany him on a 10-mile trip; is that what your story is to the jury?

A. Yes.

Q. Well, did you tell him, "Mort, I am tired; I took more than a 10 mile trip"?

The Court: What time was this?
The Witness: About 9, 10 o'clock, late at night.

Q. Did you tell him, "Morton, I am tired and worried after this long trip of mine"; did you?
A. Well, I told him I was concerned about the following. I didn't tell him I was tired, because I am sure I could continue to drive.

The Court: You were concerned about what?
The Witness: The fact that I was followed. I didn't say I was tired. I could certainly make the trip.
The Court: What was it that precipitated going to Catherine Street at that hour of the night?
[fol. 501] The Witness: He said he wanted to bring something to Rosenberg, he had some material, valuable material, which he wanted to bring to Rosenberg, and he wanted me to accompany him. He didn't identify the material, but he said he had valuable material.

By Mr. Kuntz:

Q. I wish you would keep your voice up. We would like to hear this, too.
A. Well, the thing that precipitated the trip was that Sobell said that he had some valuable material that he wanted to bring to Rosenberg.
Q. He took you along to be a witness to his carrying valuable material; is that it?

Mr. Saypol: Just a moment. That is not the testimony. That is what turns out to be the fact.
Mr. Kuntz: That is the substance of it.
Mr. Saypol: That is the fact.
The Court: Well, we will let the jury determine ultimately what the substance of it is.
Mr. Kuntz: I am satisfied to let the jury determine it.

Q. Did he show you the material?
A. No.
Q. Did he tell you what the material was?
A. No.
Q. Did you ask him what it was?
A. No.

[fol. 502] By the Court:

Q. Did he tell you why he was going at that hour of the night?

A. Yes, to bring it—he said it was too valuable to destroy and he didn't want to keep it around the house because of the danger.

Q. The danger of what?

A. The danger resulting from my being followed to New York, to the house.

By Mr. Kuntz:

Q. He told you all of that; is that it?

A. Yes.

Q. Well now, let me see if I can get this clear in my own mind. You tell us that Sobell was involved in espionage work, don't you.

A. Yes.

Q. Talk up, please?

A. Yes.

Q. And you tell us also that Sobell said he has got some very important stuff, that it is dangerous for him to keep, and he is going to deliver it to Rosenberg; is that right?

A. Yes.

Q. The same day you were being followed by FBI agents, weren't you?

A. Yes.

Q. And you offered to go into the car with Sobell, to take a 10 mile trip, knowing he had dangerous stuff?

Mr. Saypol: Just a minute now. That is not the testimony. It was Sobell who made the suggestion, not the witness.

Mr. Kuntz: May I suggest that the United States [fol. 503] Attorney just make an objection without characterizing whether it was or was not the testimony. If he doubts that it was the testimony, let the stenographer read it, because I don't think it is fair to characterize what is or is not testimony during my questioning.

The Court: Are you finished?

Mr. Kuntz: Yes, sir.

The Court: I sustain the objection.

Mr. Kuntz: I didn't hear your Honor's ruling.

The Court: I sustain the objection, because you are assuming something that hasn't been testified to.

Q. Well, when you say that Sobell told you he had some very dangerous, some very important material to deliver to Rosenberg, did you believe him?

A. Yes.

Q. So that in your own mind at least, if it was important material, it was dangerous to have around, wasn't it, in your mind?

A. I wasn't thinking of it in those terms, no.

Q. But it was fresh in your mind and you were worried that the Government agents were on your trail; is that right?

A. Yes.

Q. Nevertheless, you got into this automobile with Sobell and made that 10 mile trip; is that right?

A. Yes.

Q. By the way, I believe you told us that Sobell [fol. 504] knew that you were being followed; right?

A. I don't know that he knew. He didn't believe it at first, but I guess he felt that perhaps I was. He was skeptical, I think, to the end.

Q. Well now, let's see. You said to him, in substance, "Mort, I have been followed up here from Washington"; didn't you?

A. Yes.

Q. You told him, "I believe it is FBI agents"; is that right?

A. Yes.

Q. Did you suggest to him or did he suggest that because you were followed it might be wiser that you stay home while he takes this 10 mile trip?

A. I think I suggested it. I didn't want to go because I had been followed, and I don't think he suggested that I not go.

By the Court:

Q. What was his reply to that?

A. I beg your pardon?

Q. What was his reply to that?

A. He said he wanted me to go; he was tired and he wanted to make sure that he would make the trip back.

Q. Well, when you went down to your car, did either of you look around to see if you were being followed?

A. We did check as we went outside, as we drove, that no one was following, and apparently no one was, as we could see no one following as we proceeded from the [fol. 505] house to——

By Mr. Kuntz:

Q. Who drove?

A. He did.

Q. Sobell drove?

A. Yes.

Q. That was after he told you he was too tired to drive?

A. Yes.

Q. He drove to Catherine Slip?

A. Yes.

Q. He drove back home?

A. Yes.

Q. You didn't touch that wheel in that trip, did you?

A. Well, yes, I did, I parked the car, but other than that, no.

Q. Well, other than parking the car, you didn't touch that wheel, did you?

A. No.

Q. Then I understand Sobell came back to you and reported a conversation he had with Rosenberg; is that right?

A. Yes.

Q. Now, up to that point, which is July 1948, you had been invited on many occasions, hadn't you, as you claim, to involve yourself in illegal work; is that right?

A. Yes.

Q. But you had not involved yourself in illegal work, had you?

A. Well, I had talked with them, yes, but otherwise, no.

Q. Had you involved yourself in illegal work?

Mr. Sapol: Just a moment. I think that is a con-
[fol. 506] clusion of law. The witness has testified as to what he said.

The Court: Yes, I think that is a conclusion of law.

Mr. Saypol: He has testified to these conversations.

Mr. Kuntz: I will withdraw it.

Q. You had at least not participated in taking or delivering any documents, at least you hadn't?

A. Yes.

Q. And this was over a period of several years, was it not?

A. Yes.

Q. And you want this jury to understand or to believe that Sobell came back and voluntarily reported the conversation to you, which included the word "Bentley" the name "Bentley"?

Mr. Saypol: I object to the question.

The Court: I will sustain it as to the form of that question.

Mr. Kuntz: I respectfully except.

The Court: You can phrase without the preface that "you want this jury to believe", because I assume he wants me and the jury to believe whatever he is testifying to.

Mr. Kuntz: All right.

[fol. 507] Q. And yet you state to this jury that Sobell reported to you a conversation that he had with Rosenberg, in which the name "Bentley" was used: is that what you want your testimony to stand at?

A. Yes.

Q. The name "Bentley" at that time was quite an important name, wasn't it?

A. Yes.

Q. The newspapers had a tremendous amount of material and publicity on Bentley, didn't they?

A. Yes.

Q. She had testified before many committees—before a number of committees, right?

A. She had testified, yes.

The Court: Speak up.

A. She had testified, yes.

Q. And you read in the newspapers constantly about this Bentley lady; is that right?

A. Well, I don't know "constantly". It had occurred a short time ago.

Q. Well, the name Bentley, when it was mentioned, in your mind was rather an important name, was it not?

A. Yes.

Q. Am I correct in my recollection that you testified on your first visit in July 1950, your first visit down here to the FBI, that you reported to them this visit?

A. I did not.

Q. What?

A. I did not.

The Court: Are you referring to the Bentley situation? [fol. 508] Q. I am talking about this trip.

A. The trip down, I did not refer to that on that trip down.

Q. Mr. Elitcher, your contact with Morton Sobell from 1942 to 1948 was very brief, very few in number, and comparatively brief; is that right?

A. Yes.

Q. If I remember correctly, between 1942 and 1948 you only saw Sobell on a very few occasions; is that right?

A. Yes.

Q. This occasion of your trip to Catherine Slip, that loomed rather important in your mind, did it not?

A. Yes.

Q. I presume it loomed important in your mind because Sobell had told you that he had very secret, dangerous stuff with him; is that right?

A. Yes.

Q. As a matter of fact, according to your testimony, the only contact you have ever had in all this time with secret or dangerous stuff was on that trip, that ten-mile trip; right?

A. Yes.

Q. So that loomed very large in your mind; is that right?

A. Yes.

Q. But you didn't tell this to the FBI on the first visit?
A. No, I did not.
Q. Were you trying to conceal it?
A. At the time, perhaps.
[fol. 509] Q. In other words, you were trying to lie to the FBI, weren't you?
A. No. I omitted it, but I didn't—all right, I lied.
Q. Let's not quibble. Was it lying to the FBI, or was it—
A. If they asked me if that was all the testimony—
Q. Well, didn't they?

The Court: Were you finished?

A. (Continuing) If they asked me, "Was that all"? I probably said "No", because I did withhold that particular piece of testimony.
Q. Look, after several preliminaries, let's get back to my original question. See if I was wrong in asking it. You did lie to the FBI, didn't you?

Mr. Saypol: Just a moment now. The test here isn't whether Mr. Kuntz is wrong or not. I object to the question.
Mr. Kuntz: No, the test is whether this witness is wrong.
The Court: Now, supposing we don't have any argument about tests.
Mr. Kuntz: Well, I didn't raise it, Judge.
The Court: All right, let's have no further argument.
Mr. Kuntz: I submit, I can——
[fol. 510]—The Court: Let's have no further argument. Go on with your next question.

By Mr. Kuntz:

Q. Now, answer my question, did you lie to the FBI?
A. Yes.
Q. And in other respects you continued to lie, did you not, by not reporting fully, is that it?
A. Yes.
Q. By the way, when you finally reported this incident of the trip, the ten-mile trip, when you finally re-

ported it to the FBI, you even omitted the name Bentley, didn't you?

A. If I did, it was purely accidental. I hadn't intended to omit it.

Q. All right, I will accept that. Either you lied or you forgot.

A. Yes.

Q. What?

A. Yes. I don't recall whether I had not stated it that first time.

Q. But you did remember, you did remember when one of the FBI agents said, "Did you have any contact with Bentley"? Isn't that right?

A. Yes.

Q. And when they raised the question of Bentley, that was the first time you mentioned Bentley; right?

A. No. When they raised it for the first time?

Q. When they raised the name Bentley with you, that was the first time you told them about Bentley?

[fol. 511] A. No.

Q. I thought you told us a couple of minutes ago that you omitted Bentley?

A. I omitted a portion of the trip downtown to Catherine Slip, on the first occasions.

Q. Look, we went past that.

A. When I decided—to tell about that trip, I told the whole story. They did not bring up the name of Bentley, I did.

Q. Well, now, let's find out. Don't you remember telling Mr. Bloch, Junior, in answer to his questions, that you only told the FBI about Bentley after one of the agents asked you about Bentley?

A. Not in answer to a question, but much after they had mentioned the name of Bentley.

Q. I am just asking you whether it isn't true that you testified here this morning, in answer to a question by Mr. Bloch, that you only mentioned Miss Bentley to the FBI after the FBI suggested that name; isn't that true?

A. Yes.

Q. So that my memory is correct on that, isn't it?

A. Yes.

By the Court:

Q. Well, is that the fact?

A. Well, not right after, in time. That is the way he put it.

Q. Well, now, I wish, Mr. Witness, that you would explain an answer, if it requires explanation, and that [fol. 512] you don't answer simply yes or no, because I am beginning to get a bit confused here. Now what is the answer to that?

A. During the early questioning, they mentioned Bentley; they might have mentioned other names, too, saying, "Did you have anything to do with Miss Bentley"? I said no. That was the end of that. There was no further questioning by the FBI about the name Bentley until I brought up the name of Bentley myself, at a later period.

Q. What you are trying to say is, they did not direct your mind to this particular incident?

A. That is correct.

By Mr. Kuntz:

Q. Are you through?

A. Yes.

Q. Let's take it from there. Didn't you answer my question only a few minutes ago, when I asked you whether it wasn't a fact that you told about this conversation with Bentley after the FBI mentioned Bentley? Didn't you tell us that?

A. Yes, but much later.

Q. Didn't you tell this jury that only two or three minutes ago?

The Witness: I am now confused, sir.

The Court: Well, now, if you are confused, will you answer the question in your own words.

The Witness: Yes, I spoke, I mentioned the name of Bentley to the FBI after——

[fol. 513] Q. I didn't ask that question.

Mr. Saypol: Oh, please.

The Court: Will you continue to answer that?

Mr. Saypol: No.

Mr. Kuntz: Please, Mr. Saypol.

Mr. Kuntz: I object to Mr. Saypol addressing himself to me.

The Court: Very well, don't address yourself to him.

Mr. Saypol: I haven't. I don't intend to.

The Court: Proceed.

A. The name Bentley was brought up by the FBI agents and I said I had nothing to do with Miss Bentley. At a much later period, I told them that the name Bentley had been mentioned to me by Sobell.

Mr. Kuntz: I move to strike out the answer.

The Court: It will stand.

Mr. Kuntz: It is not responsive, and I ask the witness to answer the question I propounded. I submit it is in answer to something but not the question I propounded.

The Court: Don't raise your voice to me.

Mr. Kuntz: I am sorry, Judge; I am sorry, Judge; it means nothing. It is my customary way, your Honor.

The Court: I will accept your answer.

Mr. Kuntz: I have never tried a case in any different way. [fol. 513a] The Court: Proceed.

Mr. Kuntz: I assure you.

The Court: All right.

Mr. Kuntz: All the judges have occasion at times to say the same thing, but after a while they get to know me. [fol. 514] The Court: Very well.

Mr. Kuntz: I am sorry. I suggest that your Honor have my last question read.

The Court: Let me have his question again.

(Question read.)

The Court: All right, I think the subject has been exhausted and I believe he has answered it.

Mr. Kuntz: May I respectfully except.

By Mr. Kuntz:

Q. You never met Miss Bentley, did you?

A. No.

Q. Did this Sobell, in these various invitations to you, that you claim, to commit espionage, did Sobell mention Bentley to you?

A. No.

Mr. Saypol: I object to the question as to its form.
The Court: I will let it stand.

A. (Continuing:) No.
Q. Did Rosenberg, in the invitations to you, ever mention the name Bentley?
A. No.
Q. So, what you told the jury this morning and partially yesterday was the only time Miss Bentley's name was mentioned; is that right?
A. That is correct.

Mr. Kuntz: Thanks a lot.
The Court: Are you through?
[fol. 515] Mr. Kuntz: Yes, sir.
The Court: There is some redirect, I take it, isn't there?
Mr. Saypol: Just one or two questions.
Mr. E. H. Bloch: Before Mr. Saypol goes on redirect, I have a request to make, which I told your Honor I was reserving.
Mr. Saypol: That should be, I think, in camera, in the absence of the jury.
Mr. E. H. Bloch: I am perfectly satisfied.
The Court: All right, come up.

(The following discussion took place at the bench, outside of the hearing of the jury.)

Mr. E. H. Bloch: The defendant Julius Rosenberg now asks the Government to produce for use in this trial, and with respect to further cross-examination of this witness, the following: All written statements signed by this witness and delivered to the authorities of the United States of America;

No. 2, all notes taken by the FBI agents, who took this witness down to the Federal Building here for interrogation in July, 1950;

No. 3, all notes, memoranda or documents made by any FBI agent or any member of Mr. Saypol's staff in connection with the interrogation of this witness, at least [fol. 516] up to and immediately after his testimony be-

fore the grand jury on the first time he so testified before that body;

No. 4, the testimony of this witness before the grand jury, when he testified before that body the first time; and

Lastly, testimony of this witness before the grand jury, when he testified the last or second time.

In support of my application, your Honor, I contend that sufficient has been shown in the cross-examination of this witness to indicate that there were prior contradictory statements made in some or all of those documents or material that I have mentioned, and in the testimony that he gave before the grand jury on the first occasion, to warrant the granting of the application. I think we are well within the rather stringent rule of law with respect to the production of documents of this kind.

Mr. Saypol: Have all counsel been heard on the application?

The Court: I take it you join?

Mr. Phillips: We join.

Mr. A. Bloch: Yes.

Mr. Saypol: The showing required by the cases has not been made; nothing specific is pointed to.

[fol. 517] The rule requires that the showing, when specific, be as to a substantial and a material matter. I, of course, have not finished with my redirect; I haven't had my redirect. On the present showing, there is no basis.

The Court: Well, I don't agree with you, at least insofar as that first statement to the FBI, and if I did, I would do it in the fashion that has at least been indicated by some of the cases. I think that I should examine that first FBI statement. I believe that is the only statement where it has been pointed out that there may be some inconsistency, and I would examine that, and if I find that there is an inconsistency in a substantial manner with what has been testified here in the trial, then, of course, I will have to take the next step on it.

Mr. Saypol: That is the procedure outlined in the cases.

The Court: I shall examine it.

Mr. Saypol: Before your Honor makes a final ruling on that, will you allow me to proceed on redirect?

The Court: Yes.

Is there something you wanted to say?

Mr. Cohn: No, your Honor.

The Court: Yes, you proceed on redirect, and if I so decide that will be done, I will excuse this witness, you [fol. 518] go on with the case; then he will be subject to recall, if it becomes necessary to cross-examine him further.

Mr. Phillips: May I add to this request, while you are examining the first statement there, you must just as well examine the other statements from the same standpoint, as long as it is discretionary with you, as to the rule.

The Court: May I say to you, Mr. Phillips, the cases have held that in the first place there should not be an undue burden placed upon the Court to examine everything. I am perfectly willing—I will admit it is touch and go—and I am willing to give you the benefit of the doubt in examining this statement, and I shall examine this statement. I may even decide to examine the second statement before the FBI, but, certainly, as far as the grand jury is concerned, there hasn't been any inconsistency shown.

Mr. E. H. Bloch: May I point out to your Honor—

The Court: As far as the other statements are concerned, it is my view on the subject that you are asking them to produce notes that somebody else made, and that is not within——

Mr. E. H. Bloch: I may reserve that until these FBI men get on the stand, if, as and when they ever take it, [fol. 519] but at any rate, I would just to refresh your recollection, if I may, in connection with the basis for your Honor's deciding to examine the first statement. I suggest very strongly that the very same testimony which impels you to look at that first statement applies with equal force to the second and third statements, and also the grand jury minutes, particularly with respect to this Bentley business. Obviously, he didn't say that to the grand jury.

The Court: Well now, let us assume that I find he didn't say that to the grand jury. He has already admitted it

here, hasn't he, that he didn't tell it to the grand jury? Isn't that true?

Mr. E. H. Bloch: That is correct.

The Court: All right, he has already admitted, at least in respect to that, he was either a liar or he was wilfully withholding some testimony.

Mr. E. H. Bloch: That is right:

The Court: So you have already before this jury something that weighs on his credibility; isn't that right?

Mr. E. H. Bloch: That is absolutely right.

The Court: Now, what is to be gained? Let us assume that you do find in the grand jury minutes that he didn't tell it before the grand jury. That is the subject which [fol. 520] he has already admitted.

Mr. E. H. Bloch: I think that is a question—incidentally, I may say, that is a tactical approach, from our selfish viewpoint. I think your Honor is absolutely right. I am not at all sure that legally——

The Court: Oh, I think I would be absolutely right in that event, because if anything it might even be cumulative.

Mr. Phillips: It might be worse yet.

Mr. E. H. Bloch: As far as the June 1944 incident, I submit there are also matters of discrepancy.

Mr. Saypol: I should like to know in connection with that, just what are the discrepancies that are intended to warrant the production of that statement or any of them? I haven't heard anything of that at all.

The Court: Well, I have in mind his admission that he lied to the grand jury—not to the grand jury, rather, to the FBI, in the first statement, and he said——

Mr. Saypol: Concerning Bentley?

The Court: Concerning this incident of going to Catherine Street.

Mr. E. H. Bloch: He said that he——

The Court: He omitted it and said that was something he lied about.

[fol. 521] Mr. Saypol: Frankly, I would say I think he made an inadvertent statement with respect to lying. Of course, I will bring that out on redirect.

The Court: Off the record.

(Discussion off the record.)

The Court: Get back to the record.

Let me also say this: You hold up this question until after the luncheon recess. It may be that the Government may decide they are perfectly willing to have me even examine more, I don't know. You discuss it among your associates and we will determine that after the luncheon recess.

Mr. Saypol: May I know if there are any other discrepancies that counsel pointed to?

Mr. E. H. Bloch: Yes, I think the June 1944 incident.

Mr. Saypol: You mean, as to when the first meeting with Rosenberg took place, when Rosenberg called him to his home?

Mr. E. H. Bloch: Yes.

Mr. Saypol: There is a conflict?

Mr. E. H. Bloch: Yes.

Mr. Saypol: I don't know how that is material.

The Court: My own opinion is that it is immaterial.

[fol. 522] Mr. E. H. Bloch: Well, you see, the very incident goes to the heart and force of the accusation made.

The Court: If anything, the incident itself stands; he hasn't changed one word of that. He has said that he gave him a different date.

Mr. E. H. Bloch: That is right.

The Court: I don't see that that is anything. I am now talking in a theoretical sense, as long as we are arguing questions of law. It may very well be that the dates may become more all important. I am not representing to the Court that they necessarily will be.

The Court: Let us assume they do. You have got the date.

Mr. E. H. Bloch: But assuming that they do, it is vital in connection with the preparation of the defense and also in connection with attacking the credibility of the witness to bring out most forcefully the discrepancies in time.

The Court: You have gotten them all already.

Mr. Saypol: How much more forcibly can you have it than from the witness's own mouth. You have got it, you see, the witness has admitted it.

Mr. A. Bloch: Well, my idea was, inasmuch as the first [fol. 523] overt act alleged in the indictment mentions June '44, it may be very important as to whether or not this thing ever occurred.

The Court: It may very well be. You see, his testimony today is unusual. His testimony further is that he told the FBI several months before June '44, but his recollection today is that it was June.

Mr. Saypol: He already answered, in connection with the Normandy invasion.

Mr. E. H. Bloch: There is rather one inclusive approach to this whole question involved in the production of these statements. Basically, the purpose is to clarify the record without any peradventure of doubt, where the witness has made inconsistent statements in a prior written document, not whether he has admitted that he has made the prior inconsistent statement, but whether the fact remains that there is a prior inconsistent statement, in the last event then, I think the rule is that the Court should permit the party cross-examining to use them.

The Court: Well——

Mr. Cohn: Your Honor has ruled.

The Court: I suggest that you discuss between yourselves——

Mr. E. H. Bloch: There is just one further thought I [fol. 524] have, Mr. Saypol. Of course, in a sense we are varying the order of proof by the Court, permitting you to have redirect at this time, before any determination is made on this. I assume, your Honor, that what Mr. Saypol is going to bring out on redirect, that is not going to bear upon the cogency——

The Court: I can't say in advance right at this point. I have told you how I would rule at this point.

Mr. Saypol: I may change the situation on my redirect.

The Court: I don't know, you may; I don't know.

Mr. Saypol: While we are here, may I settle something else? In conjunction with some of my witnesses, there will be testimony by lay witnesses of a scientific and technical character. I have other experts, other witnesses, expert witnesses, to establish that lay testimony as authentic, authentic from a scientific point of view, and

authentic from the point of view that it was related to the National Defense, with all of the accoutrements. I would like first to be allowed to have those experts in the court while the lay witnesses testify, on the premise that that would simplify the examination if the expert hears the [fol. 525] testimony right from the stand; and, additionally, to maintain clarity, I may ask leave on at least one occasion to interrupt the testimony of a direct witness, that is, the direct examination of a witness, when that witness has given that technical evidence, to have the expert establish it, as I conceive.

The Court: That is entirely up to me. Why take it up here now?

Mr. Saypol: I want counsel to know, so that we don't have to waste time when it comes.

Will I be allowed to do it?

The Court: Yes, I will permit you to do it.

Mr. Saypol: And the witness may be in the court:

The Court: That is right.

[fol. 526] (The following took place in open court:)

Mr. Saypol: Will your Honor just bear with us for a moment.

Redirect examination.

By Mr. Saypol:

Q. Mr. Elitcher, you have been examined, you have been questioned here on cross-examination concerning medical treatment by yourself and your wife, by a doctor, by a physician, expert, psychiatrist. Was that consultation and treatment occasioned by some domestic difficulty?

Mr. E. H. Bloch: Well, I object upon the ground that this witness is not an expert and can't answer that. When we get into the field of psychiatry then I must admit we are getting into a nebular——

The Court: But you got into the field and I think you have left a certain implication, which all laymen have, when somebody goes to see a psychiatrist. It may be unfortunate, but all laymen get some impression when they hear that somebody has been to a psychiatrist. I

think this witness should be permitted to tell what motivated him in going to the psychiatrist.

Mr. E. H. Bloch: If that is the purpose, what motivated him, I don't mind that at all, but that wasn't the question.

The Court: He asked him whether

Mr. E. H. Bloch: What occasioned it.

[fol. 527] The Court: All right, let us proceed.

Mr. Saypol: For the protection of the record, if the Court will allow me, I want to make an observation: I could have objected to any examination of that kind on the ground that it was privileged, but I purposely refrained. On the other hand, having been brought out, and I knew about it, I think I have a right to have the whole picture put on the record.

The Court: Go ahead.

Q. What was it that made you go or caused you to go to a psychiatrist, to a doctor?

A. Well, after our marriage we found that we had domestic difficulties and we found it difficult to live with each other. We found that I had personality problems and she had personality problems which prevented a happy existence together. I found it difficult to meet with people, to have a good time, to talk in front of an audience. I think, to jump a step, without the aid that I went to, it would be difficult for me to present myself in front of this audience in this manner, and because of that my wife decided that she would attempt to correct her problems which were of a similar nature to mine, but perhaps not exactly the same. She went to a psychiatrist and felt that she was being benefited by it, but because I wasn't going, so that it would be a two way arrangement, that both of us would be improved by it, she insisted that I go. [fol. 528] It was upon her insistence that I finally did go to a psychiatrist. It was only after I had gone and had been able to recognize some of my problems, that our married life did adjust itself, and I will say right now that it couldn't be much happier as married life goes.

Q. In taking these treatments from the doctor did it require that you remain away from your work?

A. No.

Q. Did you take the treatment during working hours or at times other than those?

A. At times other than working hours.

Q. Did you lose any working time at all as a result of the treatments which you took?

A. No.

Q. In these treatments, did they consist of anything other than conversations between you and the doctor?

A. It did not. In fact, in my case I don't recall that there was any — as I said before, any therapy applied by the doctor to me. It was merely a telling of my life, my problems, and a discussion with the doctor concerning them so that I recognized what my difficulties were; some perhaps slight suggestions as to how to handle the situation, but as I say, essentially there was no therapy even applied to me.

Mr. E. H. Bloch: I move to strike out that portion of the answer in which the witness said that there was no [fol. 529] therapy applied to him upon the ground that he is not qualified to make such a statement and that it has no probative value.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Did you ever tell the defendant Sobell about the fact that you were taking these treatments?

A. Yes, I did.

Q. There has been some examination here concerning statements, questioning of you by agents of the Federal Bureau of Investigation, by myself and by members associated with me. Do you remember the first day that the agents of the FBI called upon you at your place of employment?

A. Yes, I do.

Q. I think that was July 20, 1950, was it not?

A. I don't know the date. It wasn't in July.

Mr. E. H. Bloch: If you say that is the date we will accept that as the date, Mr. Saypol.

Mr. Saypol: That was the date.

Q. On that first day had you had any prior knowledge of any kind of the fact that the agents were about to call upon you?

A. No.

Q. After they called upon you at your place of employment there was some discussion with one of your superiors there, was there not?

A. After, you say?

Q. That is, at the time they called?

A. Yes.

[fol. 530] Q. And they talked with you?

A. Yes.

Q. There upon was there a suggestion that the discussion, the questioning be taken up at the offices of the Federal Bureau of Investigation rather than at your place of employment?

A. Yes.

Mr. E. H. Bloch: May I ask that Mr. Saypol clarify the question? Suggestion by whom?

Q. Well, in the discussion who suggested that it be continued at the headquarters, at the office of the Federal Bureau of Investigation rather than at your place of employment?

A. The agents asked if I would go down with them.

Q. Was there any force employed?

A. No.

Q. Was there any coercion?

A. No.

Q. Were there any threats?

A. No.

Q. Was there any loud shouting?

A. No.

Q. And so you accompanied the agents to their offices then in this building?

A. Yes.

Q. Now when you arrived at the building, what was the atmosphere in which the discussion went on?

Mr. E. H. Bloch: Objected to as to form.

The Court: Your objection is that it is a conclusion?

Mr. E. H. Bloch: I don't know what atmosphere means, your Honor.

[fol. 531] The Court: Well, be a little more specific.

Mr. E. H. Bloch: It is vague.

Q. Was there great shouting by anybody?

A. No.

Q. Was there great manifestation or force or was there any kind of manifestation of force?

A. No.

Q. Or any threats conveyed to you directly or indirectly?

A. No, sir.

By the Court:

Q. Would you say the agents at all times behaved themselves like gentlemen?

A. I would say so.

Mr. Kuntz: What was your question, Judge?

The Court: Would you say that the agents at all times behaved themselves like gentlemen.

Mr. Kuntz: Oh, I am sure they did.

The Court: Are you willing to concede that?

Q. And at that time they did, is that right?

A. Yes.

By Mr. Saypol:

Q. Now, do you recall, Mr. Elitcher, that in all of your meetings with agents at the very outset of any discussion you were apprised of your rights as an American citizen? Were you not?

A. Well, the first few. After that it wasn't brought up again.

Q. But at the outset?

A. Yes.

Q. You were told, for instance, that it was entirely up to you whether you wanted to answer their questions?

[fol. 532] A. Yes.

Q. You were told additionally, you were reminded perhaps of something you knew, that you had a right not to incriminate yourself?

A. Yes.

Q. That is, under the Constitution?

A. Yes.

Q. And having that right you didn't have to answer any questions?

A. That is correct.

Q. You were asked to state positively at the outset that no threats and no force had been exercised in connection with your examination?

A. That is correct.

Q. At any time in your relation with the agencies of the Government, and I couple them all, has anybody tried to color your story or suggest to you anything other than the truth as you know it?

Mr. Kuntz: I object to that, if your Honor please.

The Court: Overruled.

A. No.

Mr. Kuntz: Exception.

Q. What has been stated to you regarding the testimony you have given throughout?

Mr. E. H. Bloch: Well, I object to that as too general.

The Court: That is awfully general. Rephrase it.

Q. Have you been requested expressly to say nothing else but the truth?

[fol. 533] Mr. Phillips: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Phillips: Exception.

A. I was never asked to tell anything but the truth.

Q. Was that said to you affirmatively?

A. Yes.

Q. Now, coming back to the occasion of the first day that you came here: was the complete story of your experiences over the years in connection with this espionage matter, both with respect to these defendants and others, completely told at that time?

A. No.

Mr. E. H. Bloch: I object to the form of the question.

(Last question read at the request of the Court.)

Mr. E. H. Bloch: Upon the additional ground that it is not proper redirect; that it has been answered.

Mr. Saypol: I will withdraw the question.

Q. Did you finish your story the first day?

A. No, I did not.

Q. Is it the fact that after some talk between you and after answering some questions or answering questions you said you wanted to talk to your wife?

A. Yes.

Q. Your statement was prepared that day?

A. Yes.

Q. Did that statement contain all of the information [fol. 534] which had been discussed between you, or only part of it?

A. I believe it took in everything that was discussed. What happened was——

Mr. E. H. Bloch: I object to any further statement. I submit that is a complete and exhaustive answer.

The Court: Overruled.

Mr. E. H. Bloch: Exception.

Q. Go ahead.

A. We had all felt—well, the discussion—I had told them what had occurred on the visit as I remembered it, and then they said they would like to have a written statement and would I agree to sign such a statement. I said, yes, and we sat at a table and we tried to recall everything that had been—that I had said. I don't remember whether everything was recalled. We felt that it was an exhaustive—at the moment, an exhaustive statement. Anything any of the agents recalled that was omitted they would ask me and I would say "Yes, put that down", and then I signed it.

The Court: Is this a convenient place to break off for lunch?

Mr. Saypol: Yes, your Honor.

The Court: All right, we will recess until 2:20 p.m.

(Recess until 2:20 p.m.)

[fol. 535] AFTERNOON SESSION

MAX ELITCHER, resumed the stand.

Redirect examination (Continued).

By Mr. Saypol:

Q. At the time of the luncheon recess, Mr. Elitcher, you were describing the meeting you had with the agents in the course of which you were asked whether or not you would be willing to give a statement, and you answered you would. Do you remember at that time in addition to the advice you were given about your rights, was something said about your right to counsel?

A. Yes.

Q. At that point did you then adjourn the proceedings and proceed to your home in Flushing?

A. Yes—well, not at that point. We did go to my home in Flushing. I was told—

Q. Where there was some talk about the statement? You have been told about counsel? Then up to that point isn't that a fact that the discussion had been confined mostly to Rosenberg?

A. Yes, that is true.

Q. Then you went at that time to your home in Flushing?

A. Yes.

Q. Did you talk some more?

A. Well, when I went out to Flushing, I believe when I got there I wanted to see my wife.

Q. Did you talk to your wife?

A. Yes. Briefly. And then I started to tell the agents [fol. 536] about the story, as I had been telling.

Q. Then the following day did you come back voluntarily to the office of the Federal Bureau of Investigation?

A. No. They visited me at my place of work and there they questioned me further.

Q. Was it at that time that they first raised the question of Sobell?

A. Well, that is the first time we had a full discussion about Sobell.

Q. Is that the time when you told them about Sobell?

A. Yes. I had mentioned Sobell on the previous day, too.

Q. Now, in the course of the conversation was it you or was it the agents who made first mention of Bentley?

A. The agents.

Q. Up to that point had there been any mention of Bentley, Miss Bentley? That is, on the preceding day or up to the time when they mentioned it in the place of your employer?

A. Before that? No.

Q. Had you ever met Elizabeth Bentley?

A. No.

Q. Had you ever had any dealings with her directly or indirectly?

A. No.

Q. In the course of cross-examination of you by Mr. Kuntz, he asked you a question whether or not it was a fact that you had lied to the agents in regard to Bentley. Did you deliberately make a misstatement of fact to [fol. 537] the agents with the intent to deceive them?

Mr. E. H. Bloch: Objected to upon the ground it has already been answered.

The Court: Overruled.

Mr. Kuntz: Objection on the ground that it is improper redirect examination.

The Court: Overruled.

A. No, I did not.

Q. Do you wish to make an explanation in regard to the answer you have given when you have said that you lied?

Mr. E. H. Bloch: Same objection.

Mr. Kuntz: Same objection. I object to any explanation.

The Court: Overruled.

A. When I said that I meant that I had not revealed to them this trip, the fact that I had been followed to New York and what resulted at Sobell's house, and going down to Rosenberg's house, going down to the East Side and the mention of Bentley. When I said I had lied I meant

that I had not told them that story at that particular time. Otherwise I didn't lie to them.

[fol. 538] Q. Now, from the time when they first saw you, continuing right up to the present time, have there been other matters unrelated to this case that have been discussed between you and the agents?

A. Yes.

Q. Of course, you have not testified as to those matters in this trial?

A. No.

Q. I take it, so far as you have been able, you have answered my questions and you have answered the questions of counsel for the defendants as best you could?

A. Yes.

Q. There came a time in the development of the case by the Government agencies that you continued your conferences and you supplied additional information?

A. Yes.

Q. That information was in part incorporated in a third statement that you have testified about?

A. Yes.

Q. At this trial you have testified to the best of your knowledge truthfully as to the facts as they have been elicited—

Mr. E. H. Bloch: I object to that.

Mr. Kuntz: I object to that question. It is a question for the jury to determine.

Mr. E. H. Bloch: It is a question for the jury to decide.

The Court: Sustained.

Mr. Saypol: That is all.

[fol. 539] Recross-examination.

By Mr. E. H. Bloch:

Q. When you were first taken down for questioning here in the Federal Building, how long did you stay here?

A. I stayed about three hours or a little more.

Q. Was it at that time that you went back to Flushing?

A. After that, yes.

Q. Did you make an arrangement prior to the time that

you left this building to meet the two FBI agents who questioned you the following day?

A. No, no.

Q. Did you at any time during those three hours from about noon, I believe you said, to about 3 or 3:30, while you were here, ask for the right to counsel?

A. I did not.

Q. So that so far as you knew when you left this building the first time you were brought down here for questioning, you were not coming back for further questioning, isn't that a fact?

A. That is not a fact. I thought that I would probably be brought back immediately after my stay at my home, and I thought—

Q. Did the agents—

The Court: Wait a minute. He has not completed his answer.

A. I thought—I was sure that I would be taken into custody. I knew of nothing else.

Q. Did the agents accompany you from this building [fol. 540] to your home in Flushing that afternoon?

A. Yes.

Q. How long did they stay with you?

A. We got there somewheres between 4 and 5 o'clock, I believe, and we stayed until about midnight.

Q. And did you talk to them during that period from about 4 or 5 until midnight?

A. Yes.

Q. Continuously?

A. No, there was a—

Q. What was the break?

A. There was a long interruption during which they made a search of the house.

Q. Did the FBI agents have dinner at your home?

A. They did not.

Q. Did they go out to dinner?

A. Not to my knowledge. They were there all the time.

Q. Right along?

A. Well, one went out and another came in—

Q. At short intervals?

A. Yes, but they never left.

Q. How long in all would you say the agents were out of your house during that approximately 7- to 8-hour period?

A. They were there during the whole period.

Q. You said they went out—

A. One might have gone out.

Q. One might have gone out?

A. Yes.

Q. For a few moments only?

A. Yes.

[fol. 541] Q. How long did it take the FBI agents to conduct a search of your home?

A. I say at least a couple of hours. I couldn't gauge the time but it took quite some time.

Q. Of course, there was nothing in your home which indicated that you had any information with respect to Sobell or Rosenberg, isn't that right?

A. I don't know.

Q. Well, did you have any documents of any kind connecting you with Rosenberg or Rosenberg with you?

A. No.

Q. Anything that you communicated to the FBI was by word of mouth?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. Now, during the period while the FBI agents were in your house and excluding the couple of hours that they were necessarily engaged in searching your house, did you continue to talk to them?

A. Yes.

Q. And did they make notes?

A. I don't think they made notes. I'm not sure. I mean I didn't see them at all times. I talked to them and I don't believe they made notes while I was talking to them.

Q. Where did you talk to them in your living-room?

A. Yes.

Q. And were you seated?

A. Yes.

Q. And were they seated?

A. Yes.

[fol. 542] Q. Try to refresh your recollection and tell us whether they had any paper in front of them or whether they had a pencil in their hand or a pen or any other writing implement.

A. I would say no, they didn't take down testimony.

Q. After the time came about midnight when they left, did you have any definite understanding or arrangement with them conveyed by word of mouth either expressly or impliedly that you were going to meet them the following day?

A. Well, they told me they wanted further statements from me. I don't remember whether they said it would be the next day or any day further, but they said they were going to come back and talk to me, and they didn't say where, they would let me know, about further testimony.

Q. And they did not say when?

A. That's correct.

Q. Now, when you were in your home at any time on that day from about 4 or 5 to 12, as you say, did you sign any statements?

A. Yes.

Q. Now, let us clarify this: Is it your testimony that you signed two statements that first day that you were brought down for questioning?

A. No.

Q. One here and one in your home?

A. No, no. I signed—they told me that they wanted a statement which primarily regarded Rosenberg that first evening. It was quite late and they said that they wanted [fol. 543] a further statement which would primarily take Sobell into account and that might be tomorrow, but they said they would get in touch with me again.

Q. What I am trying to get at is, and I think some of us would like to know—in fact, all of us would like to know, is whether or not when you refer to the first statement that you signed, you signed that statement in your home in Flushing, rather than here in the Federal Building.

A. Yes.

Q. And did you sign that statement just before the FBI agents left your home somewhere around midnight?

A. Yes.

Q. And that statement was signed by you after you had talked to these agents for about 3 or 3½ hours here and a number of hours in your home in Flushing, isn't that right?

A. Yes.

Q. And that was after you had a full discussion with them concerning your alleged relationship with Rosenberg, is that correct?

Mr. Saypol: Just a moment. The question is objectionable as to form.

The Court: I will overrule the objection.

A. Well, I don't know whether it was a full statement [fol. 544] I sat there and told them a narrative of what had happened. When we got through I don't think I was sure I had told everything, and they weren't sure either. They said they wanted a statement and would I be willing to sign such a statement. I said, yes and we sat in the kitchen, at the kitchen table, and we prepared the statement.

Q. And you recapitulated all the salient features of what you had told them orally?

A. Yes.

Q. Is that correct?

A. Yes.

Q. How long would you say it took you and the FBI agents to make this recapitulation?

A. I am sure it took more than an hour.

Q. And in the course of that recapitulation as well as in the course of your previous discussions with these FBI agents certain places were mentioned by you, were they not?

A. Yes.

Q. And time was mentioned by you with relation to the incidents that you told them about?

A. Yes, time, as I recall, was mentioned.

Q. Now, is it accurate to say that the last thing that was done that day of your discussions was the signing of your statement at your home in Flushing?

A. Yes.

Q. And immediately upon your signing of that statement the FBI men left, is that correct?

A. Yes.

Q. Isn't it a fact that the statement was written out [fol. 545] in the kitchen of your house?

A. Yes.

Q. On the kitchen table?

A. Yes.

Q. Now, didn't you testify on cross-examination by Mr. Kuntz just before the luncheon recess that you deliberately omitted mentioning this automobile ride that you took with Sobell from your home in Flushing to Catherine Slip and the conversation that you are alleged to have had with Sobell where Bentley's name was mentioned?

A. Yes, I omitted to say that.

Q. You deliberately omitted to say that, did you not?

A. Yes.

Mr. E. H. Bloch: That is all.

The Court: Is there anything further?

Mr. Saypol: If you will allow me one question.

Redirect-examination.

By Mr. Saypol:

Q. You testified now to a search that the agents made in your home that night. Was that search made with your consent and your approval?

A. Yes, I had consented to it before we left the building here.

Mr. Saypol: That is all.

Recross-examination.

By Mr. E. H. Bloch:

Q. How many pages according to your recollection, are in that first statement?

A. I don't know, because I didn't write it.

The Court: All right.

Mr. E. H. Bloch: If the Court please, that is all the

[fol 546] defense has with respect to this witness, with the exception of the matters we took up with you.

The Court: This witness is excused, but I would like to have him available Monday morning in the building in the event that I deem it necessary that he be recalled on the matter of these statements. I will read the statements.

Mr. Saypol: The witness will always be available.

(Witness excused.)

(The clerk called David Greenglass.)

The Court: The Government will make available to me the papers that I have to pass upon. I want the statements and I will examine the statements and the grand jury minutes as well.

[fol 547] David Greenglass, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Mr. Cohn: Your Honor, before this questioning begins, confirming permission we received from your Honor at the bench, I would state for the record that Dr. Dodson, the chairman in the Chemistry Department of the Brookhaven National Laboratories might, with the Court's permission, be seated at the counsel table with us for technical purposes during some of the technical testimony at this trial.

The Court: Very well.

Direct examination.

By Mr. Cohn:

Q Mr. Greenglass, will you try to keep your voice up so the Court and jury can get the benefit of your testimony. Are you the David Greenglass who is named as a defendant in the indictment here on trial?

A I am.

Q That indictment charging conspiracy to commit espionage?

A Yes.

Q. Have you entered a plea to that indictment?
A. I have.
Q. What is that plea?
A. Guilty.
Q. Are you now in the custody of the United States Marshal?
A. I am.
Q. Now, prior to the time you were remanded to the custody of the United States Marshal, what was your home [fol. 548] address?
A. 265 Rivington Street.
Q. That is here in Manhattan?
A. Yes.
Q. How old are you?
A. 29.
Q. When were you born?
A. March 3, 1922.
Q. Are your parents alive?
A. My father is dead. My mother is alive.
Q. Do you have any brothers and sisters?
A. I have two brothers and one sister.
Q. Your sister is the defendant Mrs. Ethel Greenglass Rosenberg, is that correct?
A. That is true.
Q. And another defendant, Julius Rosenberg, is your brother in law?
A. That is true.
Q. Is Mrs. Rosenberg older or younger than you are?
A. Older.
Q. What are the names of your brothers?
A. One brother is Samuel. One is Bernard.
Q. Are you yourself married?
A. I am.
Q. What was your wife's maiden name?
A. Ruth Printz.
Q. How do you spell that?
A. P r i n t z.
Q. When were you married?
A. November 29, 1942.
Q. Do you have any children?
A. I have two.

Q. How old are they?
A. One is nine months old and one is four years old.
Q. Boys or girls?
A. One is a girl. One is a boy.
Q. Where were you educated, Mr. Greenglass?
[fol. 549] A. I was educated in New York.
Q. Would you tell us briefly the schools which you attended here in New York?
A. I went to P.S. 4, P.S. 97, Haaren Aviation School, Brooklyn Polytechnic and Pratt Institute.
Q. What field have you pursued since your graduation from public school?
A. I am a machinist.
Q. Have you studied the work of a machinist and related problems while you were at Aviation School?
A. Yes.
Q. And also at Pratt Institute, is that correct?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir
Q. After you left school and prior to 1943 did you have any practical experience as a machinist?
A. I did.
Q. Here in New York?
A. In New York.
Q. Now, in 1943 did you enter the Army of the United States?
A. I did.
Q. As a private?
A. Private.
Q. When in 1943 did you go into the Army?
A. April, 1943.
Q. After that did you have basic training?
A. Yes.
Q. Where was that?
A. Aberdeen, Maryland.
Q. Were you thereafter assigned to work as a machinist while in the Army?
A. I was.
[fol. 550] Q. After that did you go to ordinance school?
A. I went to ordinance school, yes.

Q. What did you do out there?
A. It was a shop—

Mr. E. H. Bloch: Out where?

Q. The ordinance school: where was the ordinance school, Mr. Greenglass?
A. In Aberdeen, Maryland.
Q. I think you said it was a shop?
A. It was a shop.
Q. And did you pursue your trade as a machinist in that shop?
A. I did.
Q. How long were you at Aberdeen?
A. Until July.
Q. That is July of 1943?
A. Yes.
Q. Now, am I correct in stating that during the next year, July, 1943, to July, 1944, you were stationed at various posts, Army posts, throughout the United States?
A. I was.
Q. You were stationed at a number of them?
A. A number of them.
Q. Different parts of the country?
A. Yes.
Q. Now, in July of 1944, did you receive a new assignment?
A. I did.
Q. To what location? At what location?
A. To Oak Ridge, Tennessee, the Manhattan Project.
Q. The Manhattan Project District?
The Court: When was that?
[fol. 551] The Witness: It was July, 1944.
Q. July of 1944. You were assigned to the Manhattan District Project of the United States Army, is that correct?
A. That is right.
Q. Did you at that time know what the Manhattan District Project of the United States Army was?
A. I did not.
Q. You know now it was the project in charge of construction of the atomic bomb, is that correct?

A. I do.

Q. Now, when you were out at Oak Ridge, Tennessee, in July of 1944, how long did you stay out there?

A. About two weeks.

Q. Now, during that period were you given any security lectures?

A. I was.

Q. Did they concern the new duties you were to undertake?

A. Yes, they did.

Q. Were you told anything about the nature of those duties and the nature of the work at Manhattan Project?

A. I was.

Q. What were you told?

A. I was told that it was a secret project.

Q. Were you told at that time what was going on at that project, what was being constructed?

A. No.

[fol. 552] Q. You were told nothing about that, is that correct?

A. Nothing at all.

Q. Was the Espionage Act mentioned to you in connection with revealing any information as to what was going on in the Manhattan Project?

A. It was.

Q. After your two weeks' orientation at Oak Ridge, Tennessee, were you then assigned to report to some other place in the United States?

A. I was.

Q. Where was that?

A. Los Alamos, New Mexico.

Q. How did you go out there?

A. Train, all the way.

Q. About when did you report at Los Alamos?

A. August, 1944.

Q. When you reported at Los Alamos were you given certain instructions concerning the duties you were to pursue out there?

A. I was interviewed for a job.

Q. Did there come a time when you were told that you would work as a machinist in the shop?

A. That is right.

Q. Were you told at that time the nature of the work being done at Manhattan Project?

A. No.

Q. Was the fact that it was secret reaffirmed to you?

A. It was.

Q. Were you told just how much you were to know about what was going on at Manhattan Project?

A. I was told I was to know as much as was necessary to do my job.

Q. And nothing more?

A. Nothing more.

[fol. 553] Q. Now, would you tell us at this point when it was that you learned for the first time that the Manhattan Project District was the district of the United States Army concerned with the construction of the atomic bomb?

A. When my wife came to visit me in November, 1944, she told me that Julius had told her—

Mr. E. H. Bloch: I object to any conversation between this witness's wife and himself outside the presence of the defendant Julius Rosenberg.

The Court: She is named as a co-conspirator.

Mr. E. H. Bloch: I respectfully except.

The Court: Objection overruled.

Q. Will you tell us again? I think you said the time was November, 1944?

A. Right.

Q. What did your wife tell you?

—. She told me that Julius had said that I was working on the atomic bomb.

Q. And that was the first you knew of it?

A. That was the first I knew of it.

Q. You had never been told that by anybody in an official capacity of the United States Government?

A. No, sir.

Q. Now, going back to August of—

The Court: Will you just slow up the slightest bit because I am trying to make some notes.

Mr. Cohn: I will be glad to. I am trying to get over some of the preliminary points.

[fol. 553-a] Q. In August of 1944, Mr. Greenglass, when you took up your duties at Los Alamos, will you tell us—

The Court: Excuse me. When was that conversation with your wife? November?

The Witness: At the end of November, 1944.

The Court: Very well.

[fol. 554] Q. About several months after you first went to Los Alamos; is that right?

A. It was.

Q. During that first few months you did not know just what was being done at Los Alamos?

A. That's right.

Q. Now, I think you said you were assigned to work as a machinist?

A. I was.

Q. And where, physically, was your work done?

A. It was at a shop called the "E" building shop or the "student shop".

Q. Where was that located?

A. In "E" Building, in the tech. area, at Los Alamos.

Q. By the "tech. area", you mean the technical area?

A. Technical area at Los Alamos.

Q. Out at Los Alamos, this shop was located in one of the buildings out at Los Alamos; is that right?

A. That's right.

Q. You were assigned to work there as a machinist?

A. I was.

Q. Now, you said the "E" shop; did this letter "E" have any significance?

A. It was the building I was in.

Q. That was the building you were in?

A. Yes.

Q. Now, were you a member of a group out there? Was this building and was the machine shop under the jurisdiction of a particular group of the Manhattan District [fol. 555] Project, at Los Alamos?

A. It was.

Q. What was the name of that group?

A. It was the "E" group.

Q. The "E" group?

A. Right.
Q. Now, did the "E" group have a head or a leader?
A. It did.
Q. What was he called?
A. His name was Kistiakowski.
Q. Is that Dr. George B. Kistiakowski of Harvard University?
A. That's right.
Q. And do you know what his professional standing is, in what field he is known?
A. Yes, I do.
Q. What is that field?
A. Thermodynamics man.

The Court: Speak up.
Mr. E. H. Bloch: I didn't get that, I am sorry.
The Witness: He is a thermodynamics man.

Q. Thermodynamics?
A. Physical chemistry.
Q. In general terms, what was group "E" concerned with?
A. With high explosives.
Q. High explosives?
A. Yes.
Q. Did you have any other superiors in addition to Professor Kistiakowski?
A. I did.
Q. Will you tell us?
A. The foreman of the shop was a man by the name of De Mars, a civilian. I don't know how to spell his name. [fol. 556] Mr. Cohn: I don't either, your Honor, but we will check it.
Q. You say he was the foreman of the shop?
A. That's right.
Q. Did you have any superiors between the foreman of the shop and Dr. Kistiakowski, who was the leader of "E" group?
A. I did.
Q. Who was that?
A. His name was Fitzpatrick.

Q. Was he a civilian?

A. He was a GI.

Q. What was his rank?

A. Well, later on he became a Master Sergeant. I don't recall his rank at the time.

Q. And what was his title?

A. He was in charge of procurement and the machine shop of "E" group.

Q. He was in charge of procurement and this machine shop, this shop "E"?

A. For the "E" group.

Q. In other words, the structure was, out in Los Alamos, the "E" group, headed by Dr. Kistiakowski and concerned with high explosives; under Dr. Kistiakowski there was Sergeant Fitzpatrick—

A. That's right.

Q. —in charge of and concerned with procurement, and in so far as the shop itself, it had a foreman and that foreman was Mr. De Mars, at the beginning, I think you said?

A. That's right.

Q. And you were one of the machinists?

A. I was one of the machinists.

[fol. 557] Q. About how many machinists would you say were assigned to that shop?

A. Oh, there were about—the greatest amount was about 10 machinists.

Q. Would the number vary from time to time?

A. Yes, it would vary.

The Court: May I suggest, Mr. Cohn, that you stand back a little bit.

Mr. Cohn: All right.

Q. Now, did there come a time when Mr. De Mars was transferred, gave up his duties as foreman?

A. He did.

Q. Did you get another foreman out at the shop?

A. I did.

Q. What was his name?

A. Bob Holland.

Q. Holland, H-o-l-l-a-n-d?

A. Right.

Q. Now, after Mr. Holland's assignment, was there any change in your duties?

A. I became the assistant foreman.

Q. You became the assistant foreman?

A. Yes.

Q. Did there come a time when Mr. Holland left?

A. There was.

Q. About when was that?

A. Oh, the end of '45, beginning of '46.

Q. After Mr. Holland left, was there any further change in your duties?

A. I became the foreman of the shop.

[fol. 558] Q. Did you continue to hold that position until you were discharged from the Army of the United States?

A. I did.

Q. When were you so discharged?

A. In the last day of February, 1946.

Q. Were you honorably discharged?

A. I was.

The Court: Then for what period of time were you foreman?

The Witness: I would say a period of about two, two and a half months.

Q. Just prior to your discharge from the Army; is that right?

A. That's right.

Q. Will you tell us, were you a non-commissioned officer when you were discharged from the Army?

A. I was.

Q. What rank?

A. T/4, sergeant.

Q. T/4, sergeant?

A. Yes.

Q. Sergeant T/4?

A. Yes.

Q. Now, going back to the time when you undertook your duties as a machinist at this "E" shop out at Los Alamos, would you tell us, tell the Court and jury in general terms just what your duties were, what you did over the period of time you were working in the machine shop, as a general proposition?

A. Well, the shop itself took jobs from various scientists and made apparatus whenever they needed it; and there [fol. 559] were two methods of jobs coming through the shop. One was to—when a scientist needed a piece of apparatus, he just sent it through procurement and it was sent to either one of the three shops in the technical area.

Q. There were three shops; is that right?

A. There were three shops.

Q. What were the names of the other two?

A. "V" and "C" shop, which were bigger than mine; both were bigger than mine.

Q. Yours was the smallest shop; is that right?

A. Ours was the smallest shop.

Q. Go ahead.

A. That was one way; and they would be distributed according to how much work each shop had. The other way was go directly to Fitz and say, "How about getting this job done"? And usually it was put through, or the sketch or piece of paper or the scientist talking to one of us machinists to do it.

Q. In other words, it was your job to machine this particular—

A. Apparatus.

Q. —apparatus or product that the scientist required in connection with his experimentation on atomic energy: is that correct?

A. That is correct.

Q. Now, did the physical location of your "E" shop remain the same during your entire stay at Los Alamos? [fol. 560] A. No, it didn't.

Q. When was there a change?

A. Oh, it was in the fall 1944, we had a building built and the whole procurement section moved into that building. It was called the "Theta" building.

Q. Theta building, and the shop under which you undertook your duties was known as "Theta" shop?

A. Theta.

The Court: How do you spell that "Theta"?

The Witness: T-h-e-t-a.

Mr. Cohn: It is a Greek letter.

The Witness: A Greek letter.

Q. Was there any change in your duties when you went over to Theta shop?

A. They remained the same.

Q. You were doing the same thing, but the physical location had changed; you had been in the "E" shop before and you were now in the Theta shop?

A. That's right.

Q. Did you continue to work in the Theta shop, in the various capacities you have described, until the time that you left Los Alamos?

A. I did.

Q. Did you continue to do work such as that which you have described to us?

A. That is correct.

Q. Now, you have told us about the security talks you had at Oak Ridge and about what was told you [fol. 561] concering the secret nature of your work when you got out to Los Alamos. In addition to these oral instructions, were you given any written material containing security regulations and telling you just what you were at liberty to disclose and what you should not disclose?

A. I was given such a book.

Mr. Cohn: May this be marked for identification, your Honor?

(Marked Government's Exhibit 1 for identification.)

Mr. E. H. Bloch: May we look at it?

Mr. Cohn: As soon as I offer it in evidence, Mr. Bloch, certainly.

Q. Would you just look at this, look through it for a minute, Mr. Greenglass (handing to witness); have you examined Government's Exhibit 1 for identification?

A. I did.

Q. Do you recognize that?

A. It is a photostat of the booklet that I received at Los Alamos.

Mr. Cohn: I offer it in evidence, your Honor.

Mr. A. Bloch: Objected to on the ground it is incompetent, irrelevant and immaterial, not binding on my defendant.

The Court: Overruled.

Mr. A. Bloch: Exception.

Mr. E. H. Bloch: I suppose when Mr. Bloch said his [fol. 562] defendant, that means all defendants?

The Court: That is correct.

Mr. E. H. Bloch: Could I see it?

Mr. Cohn: Yes (handing).

Mr. E. H. Bloch: I will try to be as quick as I can.

Mr. Cohn: It is all right.

(Government's Exhibit 1 previously marked for identification received in evidence.)

The Court: Are you going to call certain portions to the attention of the jury?

Mr. Cohn: I am, your Honor. I might read just a few brief portions to the jury, pass it around so that they can examine the whole thing, and if any of the gentlemen of the defense feel I have omitted anything I should have read, I assume they will be at liberty to do that now that this has been received as Government's Exhibit 1, your Honor.

The Court: All right.

Mr. Cohn: I may say to the jury, the exhibit itself is marked "Restricted". The word on the beginning of the first page is "Security". The first two paragraphs read as follows:

> "This handbook has been designed to provide members of the technical area staff and their families [fol. 563] with a concise summary of existing security regulations. It should be understood that to obey these regulations is a minimum requirement. There is a further obligation on the part of everyone to maintain a constant and intelligent interest in the prevention and reporting of all incidents whose occurrence endangers the security of the project. It is a basic policy of the project that everyone working here should know whatever is required for doing his job well. It is therefore of greatest importance for each person to understand that he is in a position of trust with regard to all such information and also with regard to information which he may accidentally gain about other confidential matters".

[fol. 564] There is further descriptive material. On page 2 there is a section entitled "Communication".

"(A) There must be no conversation outside the technical area, or in the presence of unauthorized persons, and no information in personal letters, conveying any of the following kinds of information:

"1. The purpose of the project.

"2. The general problems being worked on.

"3. Technical data connected with 1 or 2 above.

"4. The scheduling or general progress of the work.

"5. Any overall account of the personnel employed on the project.

"6. The procurement or presence here of essential materials and installations.

"By 'unauthorized persons' are meant persons whom you do not know to have the permission of their group or divisional leaders or the director to receive the information in question.

"(B) There must be no conversation outside the post, or in the presence of unauthorized persons, and no information in personal letters, conveying any of the following kinds of information:

[fol. 565] "1. The professions or former connections of persons working in the technical area.

"2. The name of the contractor under whom the project is being run.

"3. Affiliation of this project with other war projects.

"4. The size of the project or post, or other significant features such as water supplies, fire-protection installations, etc."

"5. The general kinds of work going on in the technical area. We are engineers; the technical area should be called only 'the technical area'.

"By 'unauthorized persons' are meant persons who do not live in or have access to the post, or who, living here, have no reason to receive the particular class of information.

"6. Your address, P.O. Box 1663, Santa Fe, New Mexico, may be given to family, friends, and in pri-

vate business dealings. Do not use Los Alamos stationery in private correspondence".

Then there are further restrictions concerning the receipt of mail; travel the employees are instructed not to establish or maintain social relations with anyone living in neighboring communites; not to have friends visit them [fol. 566] out there; are told not to fill out any questionnaires, licenses, applications or anything else without first consulting the Personnel Office as to the propriety of the detailed information requested by that application; and to report any people without the proper badge

By Mr. Cohn:

Q. By the way, were badges worn out there?
A. They were.
Q. Having different significance?
A. They were.
Q. How did they go, by color?
A. By color.
Q. What did a color represent?
A. A white badge was authorized to go to the seminars and be let in on all the information that was available on the bomb.

Mr. E. H. Bloch: May I ask your Honor to instruct the witness to raise his voice, please?

The Court: Yes, we have had the same difficulty with the other witness.

Mr. E. H. Bloch: I think the acoustics in here are very bad. We had the same difficulty at the last trial.

The Court: The only thing we can do is to have the questioner stand back and therefore the witness will direct his answers to you and that may help in that respect.
[fol. 567] Mr. Cohn: I am not going to read any more of this. May I pass this to the jury?

The Court: Did you hear that last answer? Do you want it reread?

Mr. A. Bloch: Will you read the last answer?

(Answer read.)

Q. That was a white badge?

A. That was a white badge.

Q. Were there any other colors?

A. There was a red badge which allowed the bearer to get all the information necessary to be able to do his job; and then there was a blue badge which allowed—well, it allowed the bearer to go into the tech area to do various jobs like steam fitting or ditch digging, but not to be around any of the equipment or to see any of the experiments.

Q. Now, I assume that is what this regulation refers to when it says that you are to report any person wearing the wrong badge to the authorities?

A. That is right.

Q. When observed in a certain area?

A. That is right.

Q. Did you yourself have a badge?

A. I did.

Q. Now, specifically, you told us that Dr. Kistiakowski was out at Los Alamos and was in fact the leader of [fol. 368] Group E?

A. Right.

Q. And that his reputation is in the field of physical chemistry?

A. That is right.

Q. Thermodynamics?

A. That is right.

Q. While out at Los Alamos did you come to learn the identity of any other scientists who were present and working on atomic energy?

A. That is correct.

Q. Would you name one or two of those?

Mr. E. H. Bloch: Is it contended that this testimony will connect up any of the defendants?

Mr. Cohn: Quite definitely, your Honor.

A. I did get to know a number of scientists and some of world fame, for instance, Dr. Oppenheimer, whom we knew as the head of the project.

Q. J. Robert Oppenheimer?

A. That is right, and there was Neil Bore, whom I first knew as Baker.

Q. What do you mean by that?

A. It was a pseudonym to keep his identity secret.

Q. You mean that Dr. Bohr was known at Los Alamos by an assumed name, that of Baker?

A. That is right, Mr. Baker.

Q. And you knew at first that there was a man named Mr. Baker, a scientist?

A. That is right.

Q. Was there a period of time during which you yourself did not know who Mr. Baker actually was?

[fol. 569] A. That is correct.

Q. And did there come a time when you found out who he was?

A. That is right.

Q. And who is he?

A. Mr. Baker was Neils Bohr. He is a nuclear physicist.

Q. Considered one of the outstanding in the world, is that correct?

A. That is correct.

Q. Do you recall whether the fact that Dr. Bohr was out in Los Alamos was secret information?

Mr. E. H. Bloch: When was this? Will you fix the time, please?

Q. Will you tell us the best you remember when you first knew that Mr. Baker, a man named Mr. Baker, was out there?

A. It was about September or October of 1944.

Q. You knew him only as Baker, is that right?

A. That is right.

Q. Was it shortly thereafter you found out who he really was?

A. That is right.

Q. And you were told he was Dr. Bohr, is that correct?

A. That is right. In passing one of my colleagues said, "That's Baker and he is Neils Bohr".

Q. You knew that the information as to who Dr. Bohr out there was was secret?

A. I did.

Q. As a matter of fact, I think that this very security [fol. 570] pamphlet states that the identity of scientists out there and their former occupation was not to be discussed by any unauthorized person, is that right?

A. That is right.

Q. I assume as a practical matter that one's former occupation in a particular field of science would be a clue to the particular work he might be doing?

A. That is correct.

Q. Is that the reason for this regulation?

Mr. E. H. Bloch: If he knows.

A. That is the reason for it.

Q. In addition to Mr. Baker whom you came to know as Neils Bohr and Dr. Oppenheimer, may I ask you specifically, did you know that Dr. Harold Urey was connected with the Manhattan project?

A. I did.

Q. About what point after your arrival at Los Alamos did you learn that fact?

A. Oh, it must have been about December or so.

The Court: When did you learn about Dr. Oppenheimer? I do not think you told us about that.

The Witness: That was almost at the beginning of the time I was there.

Mr. E. H. Bloch: Your Honor, I will object and am objecting to whether or not this particular witness knew some of the most renowned scientists at Los Alamos [fol. 571] unless this particular information is related to the issues in this case so far as it bears upon the guilt or innocence of the defendants.

Mr. Cohn: I would be glad to state to your Honor that the name of each scientist which has been spoken by Mr. Greenglass from this stand and will be directly related to the defendants in this case and specifically to Mr. Bloch's client.

The Court: Very well.

Mr. Cohn: I make that representation.

The Court: Very well.

Q. And there were other scientists there, is that correct?
A. That is correct.
Q. Whose identities you had learned?
A. Yes.
Q. Now, was one of the scientists who was present at Los Alamos and whose name and presence you came to know Dr. Walter Koski?
A. That is correct.

Mr. Cohn: I believe Dr. Koski is here in court. Would you rise, Dr. Koski?

(A man rises in courtroom.)

Q. Do you recognize Dr. Koski here in court?
A. I do.
Q. Did you do any work at any time in connection with apparatus that Dr. Koski required in the course of his experimentation on atomic energy?
A. I did.
[fol. 572] Q. Did you specifically work in the machining of a flat type lens mold and other molds which Dr. Koski required in the course of his experimentation on atomic energy?
A. I did.

Mr. E. H. Bloch: May I just make a suggestion. I am going to suggest to the Court and the Court indirectly to Mr. Cohn that when on subjects which have been referred to in previous documents that his questions not be leading and suggestive and that he try to avoid leading and suggestive questions.

Q. You say you yourself—

The Court: Just a moment. What was the last question and answer?

(Question and answer read.)

[fol. 573] (Question read.)

Q. Now did there come a time when the first atomic explosion took place?
A. Yes.
Q. When was that?

A. July, 1945.

Q. Where?

A. Alamogordo, New Mexico.

Q. In the course of your employment at Los Alamos did you hear discussion concerning this atomic explosion?

A. I did.

The Court: Was that after the explosion or did you hear about the anticipated explosion?

The Witness: I heard of an explosion to take place at Alamogordo.

Q. Was that before?

A. I heard that before. Afterwards I heard of the atomic explosion that took place at Alamogordo.

Q. Now am I correct in stating that during the entire period of your stay in Los Alamos, 1944 to the time you were discharged in 1946, you worked in the machine shop and in the Theta shop on apparatus and equipment in connection with experimentation on atomic energy?

A. I did.

Q. Was that work pursued in the manner you have described here from sketches supplied and verbal descriptions by the particular scientists out there who required the apparatus?

A. I did.

[fol. 574] Q. I think you have told us, Mr. Greenglass, that your sister, Ethel, was a number of years older than you are; is that correct?

A. She is.

Q. Do you remember in what year she was married to the defendant Julius Rosenberg?

The Court: How much older is she?

The Witness: Six years older.

Q. Do you remember the year in which she was married to the defendant Julius Rosenberg?

A. 1939.

Q. Had you come to know Julius Rosenberg before your sister married him?

A. I did.

Q. Was he around your house?

A. Yes, he was.

Q. And you were 17 years old at the time they were married, is that correct?

A. That is correct.

Q. Now did you have any discussion with Ethel and Julius concerning the relative merits of our form of government and that of the Soviet Union?

Mr. A. Bloch: Objected to as incompetent; irrelevant and immaterial, not pertinent to the issues raised by the indictment and the plea.

Mr. E. H. Bloch: And upon the further ground that this will obviously lead to matters which may only tend to confuse the jury and inject inflammatory matter which will make it difficult or almost impossible for the jury to confine themselves to the real issues in the case.

[fol. 575] Mr. Cohn: Your Honor, of course, the views of the defendants on the relative merits of this country and the Soviet Union are extremely relevant when the charge is conspiracy to commit espionage, in that material would be transferred to the Soviet Union to be used to the advantage of the Soviet Union. I specifically cite the case of Haupt vs. United States, a decision of the United States Supreme Court which I think is particularly in point.

The Court: What did the case hold?

Mr. Cohn: The case holds, and I quote, the Supreme Court held in sustaining a treason conviction, they held that statements by the defendant showing sympathy with Germany and with Hitler and hostility to the United States were admissible as competent testimony.

The Court: What you are trying to bring out from the witness is the fact that the defendants expressed some form of favoritism to Russia in their discussions?

Mr. Cohn: Exactly, your Honor, and I am refraining from any discussion of parties or anything along those lines.

The Court: I believe it is relevant.

Mr. A. Bloch: One further statement I want to make in [fol. 576] my objection. The further objection is that the time in which such discussions were had is not specific. If it is a number of years prior to the time charged in the indictment it would be too remote.

The Court: Well, if it is too remote—

Mr. A. Bloch: To have bearing on the issues.

The Court: If it is too remote we can deal with that. I do feel that that would be a question which we can determine before it went to the jury or in the charge to the jury, as to whether or not it is too remote, and they may consider in giving any weight to it whether it is too remote.

Mr. A. Bloch: I respectfully submit that it is a question for your Honor to decide.

The Court: That may be and I will hear—what period of time do you cover?

Mr. Cohn: The period of time, I believe, your Honor, is beginning around—the period of time I intended to introduce was beginning around 1930 and continuing up to virtually the present time.

The Court: I think in view of the fact that they bring it right down to the time embraced by the indictment, that there is no question.

Mr. A. Bloch: It is a number of years. Where is he going to start and where is he going to finish and how [fol. 577] many discussions were there?

The Court: It is going to start—

Mr. A. Bloch: In 1938.

The Court: Excuse me. It is going to start where the defendants start it. The mere fact that they started some time back I don't think is something that should be used in their favor in connection with the argument you are making, if it is, particularly, a continuous discussion, and continued during the period of the conspiracy, and in view of the fact that the indictment charges conspiracy to commit espionage in that matters of national defense which would be advantageous to Russia is charged in the indictment I think it is most relevant.

Mr. E. H. Bloch: If your Honor please, I would like to argue at some length because we would come to it—

The Court: No, I don't want any further argument.

Mr. E. H. Bloch: I would like to cite some cases to the Court. Mr. Cohn was given an opportunity to cite the Haupt case.

The Court: Have you it right there?

Mr. E. H. Bloch: I have it, yes.

The Court: Was that contained in your original brief? [fol. 578] Mr. E. H. Bloch: No, it wasn't. I am going to give you the case. It is my contention that Mr. Cohn's—

The Court: Will you give it to me as briefly as Mr. Cohn gave it to me?

Mr. E. H. Bloch: I certainly will. I would like to make this statement before I give you the cases, and I think we are entitled to have this clear. Is it the purpose of Mr. Cohn to confine the discussions that he asked about to expressions of the defendants concerning the Soviet Union, or is he also going to introduce or intersperse questions concerning political affiliations, like affiliations with the Communist Party?

Mr. Cohn: Well, maybe I can clarify that, your Honor, reserving our position on admissibility of discussions concerning affiliations with the Communist Party, which we said yesterday, of course, we felt, under the law and as matter of equity, are quite admissible and bear on the charge in this indictment. My present purpose is to eliminate the possibility of delay on matters that I might consider not worth occasioning great delay. My purpose is merely to ask two questions: Were there such discussions? What was the nature of those discussions? What was the stated position of these defendants to Mr. [fol. 579] Greenglass over this period of time? I leave it after those three questions. That is my present purpose.

Mr. E. H. Bloch: I don't know whether Mr. Cohn meant to do this, but I don't think he told the Court what we are seeking. I am trying to find out from you, Mr. Cohn, whether the prosecution is going to introduce any evidence through these alleged discussions concerning a number of things, evidence with respect to the political affiliations like affiliations with the Communist Party of the United States.

Mr. Cohn: My question is going to be, Mr. Bloch, the question which now stands is, did you have any discussion, I believe, with your sister and brother-in-law concerning the form of government in the Soviet Union and the form of Government in this country and the relative merits of the two countries and the systems of government in the two countries? If the witness said he did have such dis-

cussions, I will then ask him over what period of time, and when he tells us the period of time, I will then ask him briefly what was said by the defendant, Ethel Rosenberg and by the defendant, Julius Rosenberg in those discussions as a general, rather than as a specific matter. I don't think it could — much more extensive than that.

[fol. 580] Mr. E. H. Bloch: I think you have clarified it a lot. If I understand you correctly, and the only reason I am pressing this is that I don't want to object unnecessarily, citing a list of cases to the Court which may have no relevance. Mr. Cohn I think impliedly is now representing that he is going to confine these discussions to the opinions of these defendants as expressed to this witness concerning their attitude toward the Soviet Union and the United States, but that there will be no discussion concerning alleged political affiliations of this witness with the Communist Party of the United States or any other party.

Mr. A. Bloch: As modified and defined by Mr. Cohn I still urge my objection on the grounds stated.

Mr. Cohn: For the purpose of saving time, which is probably an idle gesture by this time, I had not intended and I do not now intend to ask—I think this is what Mr. Bloch is after—Mr. Greenglass about his knowledge whether or not there were any Communist Party activities on behalf of these defendants, and if there were what they were.

The Court: All right. Objection overruled.

Mr. E. H. Bloch: Of course, I am joining in the objection already made.

(Record read.)

[fol. 581] Mr. E. H. Bloch: I object to the question on the further ground it is leading and suggestive.

The Court: Overruled.

Mr. E. H. Bloch: Exception.

Cross-examination.

By Mr. Cohn:

Q. You may now answer.

A. I did have such discussion.

Q. Over what period of time, roughly?
A. From about 1935 to about 1946 or 1946.
Q. To 1945 or 1946; is that right?
A. Yes.
Q. Were those discussions numerous?
A. At the beginning, yes.
Q. And at any time in the course of those discussions did the stated position of either Ethel or Julius Rosenberg change? Did their views change?

Mr. E. H. Bloch: I object to it.
Mr. A. Bloch: I object.
Mr. E. H. Bloch: I object to the form of the question.
The Court: You mean we haven't had the views yet and he is asking about a change?
Mr. E. H. Bloch: Yes.
The Court: You better ask about the views, first.

Q. Which system of government did they tell you they [fol. 582] preferred?

Mr. E. H. Bloch: May I again object and ask some clarification? I understand from this witness's answers that he said that he had discussions with these defendants from 1935 to 1944 or 1945.
The Court: 1945 to 1946.
Mr. E. H. Bloch: 1945 or 1946. I am going to ask your Honor to compel Mr. Cohn to detail the time of each discussion so that appropriate objection may be made for the record.
The Court: I thought you didn't want it, but if that is what Mr. Bloch wants, all right. If you can remember each time you had such a discussion you can tell us, and if you can't remember the exact date or the exact month but you remember the year, you can tell us and then tell us what the discussion was.
Mr. Cohn: I think, your Honor, of course, if Mr. Bloch thought I didn't go far enough or he thought anything further was required for his purposes, he could clarify it on cross-examination.
The Court: Yes.
Mr. Cohn: But if your Honor wants me to—
The Court: Let us get as much as we can this way.

Mr. Cohn: May I still try to keep it brief?

The Court: Yes. Try to get from him what he can re-
[fol. 583] member at this time. Then Mr. Bloch can detail it more for him.

By Mr. Cohn:

Q. I think you said these discussion with your sister began in 1935.

A. I did.

Q. When did they begin, so far as the defendant Julius Rosenberg was concerned?

A. About 1937.

Q. All right. Can you remember any specific occasions on which they had these discussions with you?

A. Do you mean the early period or later?

Q. Start with the early period. Mr. Bloch wants everything. Let me ask you this: In the early period how frequently would they express their views regarding the relative merits of the two countries?

A. I would say two or three times a week.

Q. Two or three times a week.

Mr. Bloch: Your Honor, I submit on the basis of that I should be required to take up the time of the Court and jury—

The Court: No. He has answered that it was two or three times a week now. Now let us find out whether the conversations ran along the same line on each occasion.

Mr. Cohn: That is the question to which Mr. Bloch objects.

[fol. 584] Q. Did the conversations run along the same line over a period of years?

Mr. E. H. Bloch: I object to the form of the question. It is a question for the jury to decide.

The Court: I will overrule it.

Mr. E. H. Bloch: Exception.

The Court: I am going to give you a chance to go into what you want to within the limits that I shall describe if there should be limits.

Mr. E. H. Bloch: I understand your Honor's orientation but I still feel that proper questions must be asked on direct.

If they are improper it is not incumbent upon me to cross-examine.

The Court: That is right, if they are improper, I will be the one to rule that they are improper, and I have ruled that they are not improper.

A. Well, roughly, they did. The conversations on the merits of Socialism over capitalism I think, in the beginning were more vehement.

Mr. E. H. Bloch: Mr. Greenglass, please, it is difficult to to hear you.

The Witness: In the beginning they were more vehement.

Mr. E. H. Bloch: Well now, I object to that.

The Court: Yes, I will sustain that.

[fol. 585] Q. Talking about Socialism over capitalism, did they specifically talk about Socialism as it existed in the Soviet Union and capitalism as it existed here?

A. They did.

Q. Which did they like better? Did they tell you?

Mr. E. H. Bloch: I object to the question as leading and suggestive.

The Court: I will sustain the objection on that ground, which they liked better. But you tell us whether or not on any occasion they told you that they preferred one over another.

The Witness: They preferred Socialism to capitalism.

The Court: Which type of Socialism?

The Witness: Russian Socialism.

Q. Now, you say in the early period these conversations were to your knowledge two or three times a week?

A. Yes.

Q. That is your best estimate?

A. Yes.

Q. Where did they take place?

A. At my mother's home, 64 Sheriff Street.

Q. What do you describe as the early period? Mr. Bloch wants to know. It started in 1935.

A. Well, I would say before 1939.

Mr. E. H. Bloch: Then, if the Court please, I move to [fol. 586] strike out the testimony upon the ground that

in addition to the grounds already urged, it is too remote to the charges and the issues in this case.

The Court: You say it started then and continued, didn't it?

Mr. E. H. Bloch: I know, but I am now talking about these particular discussions which he claims were had between 1935 and 1939. I object to any testimony about any ideas that these defendants are alleged to have had.

The Court: Did I not understand that these conversations continued up to, as you put it, 1945 or 1946? What is this limitation of 1939 that Mr. Bloch speaks of?

Mr. Cohn: Mr. Bloch has been asking me to fix the number of times, where the occasions were and all that. Mr. Greenglass spoke, your Honor, about an early period at which these discussions took place. I assume by the year 1939—that was before Mr. and Mrs. Rosenberg were married; they took place in the home of his mother. I suppose after that they took place some place else and after that some place else.

The Court: But these conversations continued, did they?

The Witness: Yes, they did.

[fol. 586-A] The Court: Along the same lines?

The Witness: They did.

By Mr. Cohn:

Q. Up until 1945 or 1946?

A. That is right.

The Court: We will take a recess.

(Short recess.)

[fol. 587] (Jury in box.)

By Mr. Cohn:

Q. Mr. Greenglass, when you went out to Los Alamos, was your wife out there with you?

A. No, she wasn't.

Q. I think you told us she went out there in August of 1944; is that right?

A. That's right.

Q. When after August of 1944 did you see your wife?

A. She came to visit me on our second wedding anniversary. It was November 29, 1944.

Q. It was in November, November 29, 1944?

A. That's right.

Q. For how long a period of time was she out in Los Alamos?

A. I got a three-day pass plus a two-day week-end, which made five days.

Q. Where did she stay? Was she out at Los Alamos?

A. No, she stayed at Albuquerque.

Q. Where, at an apartment, hotel?

A. In a hotel.

Q. In a hotel?

A. That's right.

Q. You say you got a three-day pass and you worked it in with the week end?

A. That's right.

Q. You had five days off; is that right?

A. That's right.

Q. You joined your wife at the hotel in Albuquerque?

A. Albuquerque.

Q. She remained there for the entire five days?

[fol. 588] A. She did.

Q. Now, was there any time during those five days when you had a conversation with your wife concerning the atom bomb?

A. I did.

Q. When during that five-day period was that conversation had?

A. In the latter half of the furlough. We went for a walk out on Route 66, past the city, Albuquerque City limits, and not yet to the Rio Grande River, and my wife started the conversation.

Mr. E. H. Bloch: If the Court please, before the witness gets into the conversation, I want to record our objection to any conversation had between this witness and his wife outside the presence of the defendants.

The Court: Very well.

Mr. E. H. Bloch: I assume I am speaking for all the defendants.

Mr. A. Bloch: I understand this is a general objection to the introduction of this kind of testimony and you are taking it subject to connection?

The Court: No, I am taking his testimony concerning his conversation with his wife on the ground that he and his wife are co-conspirators together with the defendants.

Mr. A. Bloch: If they are co-conspirators.

The Court: Alleged co-conspirators. Of course, if they are merely having a conversation that isn't in furtherance [fol. 589] of the objective and does not in any way mention the defendants, why of course there would be no materiality to it. That would be the objection, no materiality.

Mr. E. H. Bloch. Well, if the Court please, isn't there implicit in the Court's mind that there still would have to be that connection whereby the Government will prove to the satisfaction of the Court and the jury that there was a conspiracy between this witness, his wife and the defendants Rosenberg?

The Court: Of course.

Mr. E. H. Bloch: That is implicit.

The Court: Of course.

Mr. E. H. Bloch: So in that sense it is being taken subject to connection and subject to motion to strike in the event the Government fails to do that.

Mr. Cohn: May we have the last question, Mr. Reporter, please?

(Question read by reporter.)

Q. Will you tell us, Mr. Greenglass, what your wife said and what you said.

A. My wife said that while she was still in New York, Julius Rosenberg invited her to dinner at their house at 10 Monroe Street. She came to dinner and later on there was a conversation between the three present, my wife, my sister and my brother-in-law.

[fol. 590] It went something like this: Ethel started the conversation by stating to Ruth that she must have noticed that she, Ethel, was no longer involved in Communist Party activities—

Mr. E. H. Bloch: Now, if the Court please, this is just what I was afraid of, and I move to strike it out, any reference to Communist—

Mr. Cohn: I object to it being struck out, your Honor, on the ground that it is directly relevant to the charge in this indictment which will emerge as this conversation unfolds.

The Court: I will overrule the objection.

Mr. E. H. Bloch: I respectfully except.

The Court: The mere fact that the word "Communism" is mentioned does not taint all of the testimony and make it inadmissible if it is otherwise relevant.

Mr. E. H. Bloch: But apart from the lack of causal connection between Communist affiliations and sympathies with the crime in question, the introduction of this testimony also introduces an element of proof of another separate and distinct crime.

The Court: Well, you have already stated your objection. You stated it yesterday, and you stated it, I believe, the day before, too.

[fol. 591] Mr. E. H. Bloch: I think that is so, your Honor.

The Court: And I have your objection and I have made my ruling.

Mr. Cohn: May I have the last part of the answer?

(Record read.)

Q. Go ahead, Mr. Greenglass.

A. That they don't buy the Daily Worker anymore or attend meetings, club meetings. And the reason for this is that Julius has finally gotten to a point where he is doing what he wanted to do all along, which was that he was giving information to the Soviet Union.

And he then went on to tell Ruth that I was working on the atomic bomb project at Los Alamos, and that they would want me to give information to the Russians. My wife objected to this, but Ethel said—

Mr. E. H. Bloch: I object to the characterization.

The Court: Is this what your wife told you?

Mr. Cohn: Mr. Greenglass is relating what his wife said to him. I assume that he is doing his best to recall the words that were spoken.

Mr. E. H. Bloch: If she used the word "object" of course, I will withdraw my objection.

The Court: Did your wife use the word "object"?

The Witness: She told me that she didn't think it was a good idea.

[fol. 592] Mr. E. H. Bloch: All right.

The Court: Very well.

The Witness: And that she didn't want to tell me about it.

The Court: Proceed.

A. (Continuing) But they told her that I would want to know about it and I would want to help, and that at least—the least she could do was tell me about it. So that was the conversation. At first—she asked me what I thought about that—at first, I was frightened and worried about it and I told her—

Mr. E. H. Bloch: I object to his reactions or his state of mind.

The Court: Strike out his reactions.

Q. What did you tell your wife?

A. I told my wife that I wouldn't do it. And she had also told me that in the conversation, Julius and Ethel had told her that Russia was an ally and as such deserved this information, and that she wasn't getting the information that was coming to her. So later on that night after this conversation, I thought about it and the following morning I told my wife that I would give the information.

Q. Does that complete the conversation to the best of your memory that took place between you and your wife?

A. That's right. Then when I had told her what the [fol. 593] conversation was—I mean, I told her I would do it, she asked for specific things that Julius had asked her to find out from me.

Q. You mean specific information about the Manhattan Project?

A. That's right.

Q. Would you tell us as you recall it, what your wife asked you?

A. She asked me to tell her about the general layout of the Los Alamos Atomic Project, the buildings, number of

people and stuff like that; also scientists that worked there, and that was the first information I gave her.

Q. You say she asked you for that information, is that right?

A. She asked me for that information. When I gave it to her she memorized the information.

Mr. E. H. Bloch: I object to that.

Q. Did you have any conversations—

Mr. E. H. Bloch: I move to strike that out.

The Court: There was no answer.

Mr. E. H. Bloch: No, what I am objecting to is that she memorized that and he is not in a position to know it.

The Court: Strike it out.

Q. Did you have any conversations with your wife concerning whether—

The Court: Wait a minute. You gave her the answers [fol. 594] to all of these questions?

The Witness: I gave her the answers to all of these questions, yes.

By Mr. Cohn:

Q. Do you know whether she wrote this information down or not?

A. She did not write the information down.

Q. Did you have any conversation with her as to whether she was going to write it down or not?

A. She told me that she was instructed not to write it down, but to memorize it.

The Court: Instructed by whom.

The Witness: Instructed by Julius.

Q. In giving to your wife the names of the scientists working at Los Alamos on that occasion can you now recall any of the names which you furnished to her?

A. I gave her Oppenheim's name, I gave her Bohr's name and Kistiakowski's name.

Q. Did you tell her about this Bohr-Baker situation?

A. I did.

Q. You say you gave her a general description of the layout at Los Alamos, is that right?

A. That's right.

Q. How about the number of people there, the personnel, did you give any estimate of figures on that?

A. I gave her an estimate of how many people there were in the technical area.

[fol. 595] Mr. A. Bloch: May I ask to have the last answer repeated.

The Court: Repeat it, please.

(Answer read.)

Q. Of course, the repeating of this specific information is forbidden in that security book which is in evidence as Government's Exhibit 1, is that correct?

Mr. E. H. Bloch: I think the exhibit speaks for itself, your Honor.

Mr. Cohn: I will withdraw it, your Honor.

The Court: I was about to overrule the objection because of its unimportance.

Mr. Cohn: It is unimportant and that is why I withdrew the question.

The Court: It speaks for itself and the answer would merely have been cumulative, so it makes no difference.

Mr. E. H. Bloch: I agree.

Q. After you furnished this information to your wife, did your wife return to New York?

A. My wife returned to New York and I had told her that I would be in New York in January on furlough, so she left for New York, knowing that I was going to be there.

Mr. Cohn: Raise your voice a little because Mr. Bloch has some trouble hearing you.

[fol. 596] Q. Did you actually have a furlough in January?

A. I arrived home January 1st, 1945.

Q. January 1st?

A. 1945, yes.

Q. How long was your furlough?

A. It was a 15-day furlough with travel time.

Q. How long was that as a practical matter?

A. About 21 days or 22 days.

Q. When you say you arrived home, where were you then residing, where were you and your wife then living?

A. 266 Stanton Street, in Manhattan.

Q. Here in Manhattan?

A. Right.

Q. After your arrival in New York did there come a time when you saw the defendant Julius Rosenberg?

A. Yes, he came to me one morning and asked me to give him information, specifically anything of value on the atomic bomb, whatever I knew about it.

Q. Now, where did this conversation take place?

A. In my home at 266 Stanton Street.

Q. Did you say this was in the morning?

A. This was in the morning and he told me to write up this information at night, late at night, and he would be back the following morning to pick it up.

Q. About how long after you had arrived in New York did this conversation take place?

A. A few days after I arrived.

[fol. 597] Q. And did he outline to you in any further detail, the information he wanted?

A. He asked me what I was doing out there and I told him I was working on lenses, H. E. lens molds.

Q. That is the lens molds in connection with Dr. Kistiakowski's work that you told us about?

A. That is right.

Q. What else?

A. And he told me to write it up, to write up anything that I knew about the atomic bomb.

Q. Anything else?

A. He gave me a description of the atom bomb.

Q. Did you do any writing at that time?

A. I wrote up the information he wanted that evening. It included sketches on the lens molds and how they were used in experiments.

Q. Anything else?

A. Plus a description of it.

Q. Anything else?

A. Plus a list of scientists who were on the project.

Q. Do you recall the names of any of these scientists?

A. Yes, I gave him the same ones I had given him originally, plus, I gave him a scientist, Baker. I also gave him a scientist by the name of—well, there was one Hans Baker.

Q. Do you know what his field was?

A. Yes, his field was theoretical physics.

[fol. 598] Q. Did you furnish that information?

A. I gave that information, too.

Q. And you say there were some other scientists whose names you do not recall?

A. I don't recall at this moment.

Q. Was this information turned over to Rosenberg?

A. It was, the following morning.

Q. Where?

A. At my home.

Q. At your home?

A. Yes.

Q. Up at 266 Stanton Street?

A. That's right.

Q. Now, you turned that information over to the defendant Rosenberg the following morning in your home, is that right?

A. Yes.

Mr. Cohn: May we approach the bench a moment, your Honor?

(The following took place at the bench out of hearing of the jury:)

Mr. Cohn: We have reached a good stopping place, your Honor.

Mr. Saypol: We are going into a new phase and I don't want to break the continuity. I think it might be advisable if the Court will bear with us to take a recess now.

The Court: Does anybody have any objection?

Mr. E. H. Bloch: (To Mr. Phillips) You have no objection [fol. 599] to a recess for the day because they are going into a new subject?

Mr. Phillips: No.

Mr. Saypol: In that connection, bearing in mind how conscientious your Honor is with respect to maintaining

a continuing calendar, Monday, March 19th, my son gets married in the afternoon.

The Court: Off the record.

(Discussion off the record.)

The Court. (To the Jury) Well it sort of goes against the grain of my Scotch soul, but it looks like we have got to adjourn early today, so we will recess until Monday morning at ten-thirty. I am going to ask you again, I am going to remind you again not to discuss this case with anybody, not to permit anybody to discuss it with you. This case apparently, will arouse a lot of interest in the newspapers. I know that you must, therefore, redouble your efforts not to read anything about it and not to watch anything on television that concerns itself with it, or listen to anything on the radio that concerns itself with it. So we will recess until ten-thirty Monday morning.

I want to compliment you on your record of promptness, and I hope that you keep it up, and I wish all of you a pleasant weekend.

(Adjourned until Monday, March 12, 1951, 10:30 a. m.)

[fol. 600] New York, March 12, 1951;
10:30 o'clock a. m.

TRIAL RESUMED

RULING ON PRODUCTION OF STATEMENTS

(The following proceedings were had in the absence of the jury and at the bench:)

Mr. E. H. Bloch: If the Court please, at or about 10:15 this morning I was served with photostatic copies of the statements——

The Court: Wait a minute. Just hold that for a moment. Let me have the statements.

Mr. Saypol: I believe they have been turned over to counsel.

The Court: Let me have them. I want to mark them for identification. I want the grand jury minutes too.

Mr. E. H. Bloch: Yes.

The Court: Let me say for the record that I have ex-

amined three statements given by the witness Elitcher to the FBI dated respectively July 20, 1950, July 21, 1950 and October 23, 1950. I have as well read the grand jury minutes of Mr. Max Elitcher dated August 14, 1950 and [fol. 601] January 31, 1951.

It is my feeling in the matter, that while I find no true inconsistency, in the sense of the word as we know it, yet, in view of the tack which counsel's examination took, that is, the question of whether an event or two might have been omitted from any of these statements, or the grand jury minutes, I have determined that I shall turn over to the defense the statements given to the FBI respectively noted before, and the grand jury minutes.

Now I want it clearly understood however, that your examinations have been exhausted. This is a matter in which I have exercised my discretion. Whether or not any other Court would do it I don't know. I must say that I examined all of the authorities on this subject and there isn't any true clarity on it. So that I have resolved it in your favor. I don't want a long protractive cross-examination again to start. You have, all of you, already examined Elitcher about his previous statements without having the statements before you. He has made certain admissions, and the admissions I find consistent with what appeared in these statements.

Now I think I ought to tell you this in fairness to yourselves, that in using these statements, remember that the Government will have a right to use the balance. Now it is true that it has no testimonial purpose or value at [fol. 602] all in the court; it is merely for the purpose of showing that the witness had either made a statement as you contend inconsistent and the Government will contend consistent, and in view of the fact that we are not dealing with the case where the witness says he said one thing today, where you are going to show he said another thing contrary to that, but rather where the entire context of the writing will have to be read. I just want you to be aware of what you are going to be faced with there.

Now, we will mark these for identification, all of these statements, and I will now hear from you.

Mr. E. H. Bloch: Yes, your Honor. I was going to say

that we were served at 10:15. As you can see even from a summary disposition, that it would take probably about a half hour minimum to even read the statements without trying to digest then for inconsistency, for whatever purpose the defense may seek to utilize them and therefore, I would like to make the suggestion to the Court, and ask a favor of the Court, that the witness Elitcher be asked to come back on some subsequent date, whatever date——

The Court: No, no.

Mr. E. H. Bloch: Of course, it is up to your Honor, and permit Mr. Greenglass to continue his direct.

The Court: No. I am giving you a little more time to [fol. 603] read these, but I am going to dispose of that Elitcher situation. I am not going to have any of these witnesses hanging fire. That will be my course throughout this trial. I will not have them subsequently called back.

Mr. A. Bloch: May I suggest that you set the continuation of any cross for 2 o'clock this afternoon, to give us a chance to look at them?

Mr. Kuntz: I for myself and I think my colleagues will agree to spend this evening not only on reading these but checking them against the testimony, because we have the transcript——

The Court: No, no. You know the testimony and you can check it against the testimony. You know the testimony. It only occurred on Friday. It is clear in your mind and you know specifically the instances that he was cross-examined on where he admitted that he did not make that statement either to the FBI or to the grand jury. I don't believe you even went as far as the grand jury, Mr. Bloch, but I am going to permit you to see it because I have examined it.

Now, I won't have these witnesses hanging around day after day until these minor little things that come up during the course of the trial are disposed of. My suggestion is two-fold: Either we hold up the commencement of the [fol. 604] trial for a half hour or we adjourn for an hour and a half today for lunch and let the defense look at it, and I am inclined to the latter view.

Mr. Saypol: We will agree on whatever course the Court proceeds along.

The Court: All right. We will then recess at one o'clock and you will have just a little less lunch time. We will recess at one o'clock until 2.30. That will give you an opportunity. It won't take you long to read the statements. It didn't take me long to read the statements; no more than a half hour tops. Can't you get them an extra copy?

Mr. Saypol: We probably can.

Mr. Phillips: May I add my solicitation——

Mr. Saypol: We won't give them an extra copy of the grand jury minutes.

The Court: Well, while one is reading the statements, the other can start on the grand jury minutes.

Mr. Phillips: Your Honor was courteous and kindly and everything else in letting us have this material. Wouldn't it be just as well to extend that to give us sufficient time to consult on the matter of determining what course to take?

The Court: I believe you have——

Mr. Phillips: Will we have enough time in a half hour [fol. 605] to read these?

The Court: No. You will have an hour and a half. You don't eat for an hour. I don't. I eat for 10 minutes. I have a sandwich and coffee. You can arrange to have a sandwich and coffee brought in for you today, but we must move this trial along, and I am not going to have a delay by these so-called side issues. Now, you are getting——

Mr. Phillips: Would that delay the trial if something else is done in the interim and we work in the evening?

The Court: I think Mr. Elitcher is entitled to be either destroyed, or he is entitled to be rehabilitated, or he is entitled to stand as is.

Mr. Phillips: He is not working. He is not losing any time.

Mr. Saypol: Mr. Saypol says after you get through reading these statements and you make any examination you desire, he will then ask to have them marked in evidence and read to the jury, or if you want we will do that now.

Mr. Kuntz: I haven't even intimated—I haven't looked at them——

The Court: Now gentlemen, I have ruled. In order to get this trial moving in an orderly fashion I have deter-
[fol. 606] mined that you are to examine these statements I have referred to before and the grand jury minutes. You are to do so during the one and a half hour lunch period. I have read them. It didn't take me half hour to read them. You will have an hour and a half. I don't think you will have any difficulty whatsoever in crystalizing the particular thoughts you have in mind. So there it is. Mr. Elitcher will be back on the stand, Mr. Saypol.

Mr. Saypol: Yes.

The Court: At 2.30. Or you can hold him available. They may decide they don't want to recall him.

Mr. Saypol: All right.

The Court: Have him available in the event that they say they want him at 2.30.

Mr. Saypol: I would like to address myself to this topic generally for my future guidance: My conception of the law as it is, confused as it is, that prepared material of the prosecution like this is to be made available only when it is exculpatory; that is the word that Judge Hand used. Your Honor knows in the evolution of a case, the lawyers point of view in preparation is somewhat different from the investigators and many times in preparation, in sifting, a good deal either of the irrelevant, immaterial or the
[fol. 607] unnecessary and cumulative is eliminated.

The Court: I disagree with that point of view, Mr. Saypol. As a matter of fact, as a former Assistant United States Attorney, I understand very well that you don't sit down with a witness on the first occasion and take everything from him. You get just enough on that first occasion that you think would indicate the commission of an offense. Then you go on further by statement after statement, but in view of the fact that this state of the law on this subject is by no means definite and certain, I am going——

Mr. Saypol: I understand your Honor's ruling. I understand the basis for it, and I make no point in that regard. I am trying to find some guidance for the future. I will have other witnesses; other witnesses like this witness have told of incidents which I consider unnecessary to make a case. They are cumulative. There is this incident

where he met Rosenberg, this Bentley incident as to which he said nothing in the course of his first examination. Initially, nobody knows whether an individual is a prospective witness or a prospective defendant. The plan and course of an investigation is not something that is set in advance, but if I have to guide myself in the premises that a witness has to testify to everything that he has told at any time [fol. 607-A] in order to avoid exposing my files, not that I have any fear about it, because I think they are protected, that is why I think it should not be done and I should like to know it.

[fol. 608] The Court: I can't tell you. I just can't tell you, and I will say further that I am ruling on this particular one at this particular time because I have been able to examine them without too much burden on the Court. I think what I have done is not inconsistent with the Alper case. I think I have done what the Circuit Court would want me to do, as indicated by the Krulewich case. It has not been too much of a burden. I will say this, because the jury is absent: My own feeling in the matter is that this man really told a very good, honest, logical story, consistent with what he told here in court. That is my general feeling on the subject.

Mr. Saypol: May I address myself to another subject? I might say this at the bench because I think it ought to be kept confidential among counsel: On Saturday, in the mail, Elitcher received an anonymous threatening letter. Its substance was "Watch out for the time bomb."

Mr. Phillips: Watch out for what?

Mr. Saypol: The time bomb. It has no significance to me, but in the exercise of a policy of caution, I apprised the New York City Police Authorities. I didn't want to put the FBI on a situation like that. I mention it merely [fol. 609] in a precautionary sense so that nobody may say that I overlooked it in the event something should happen.

Mr. E. H. Bloch: I would like to say to the Court in response to Mr. Saypol that the defense is completely in accord with the prosecution in an attempt to track down and convict anybody who would dare intimidate a witness or otherwise obstruct justice. I might say to the Court,

as the Court well knows, these three defendants are held without bail. You have remanded them. They have been in jail for many, many months. I know that Mr. Saypol is not imputing that the defense counsel either directly or indirectly would have anything to do with it. We want to state for the record that we condemn any such tactics now.

Mr. Saypol: Let me say this: Aside from what I consider to be my obligation, I don't want any cross-examination by some astute counsel to point a finger at a witness and say "Isn't it true that the district attorney set a couple of cops on you?"

Mr. E. H. Bloch. No, no.

The Court: Well, I had hoped that we would be able to get through this trial without what occurs sometimes in a trial; that is, threats made to a witness of one nature or another. I shall deal in a very severe manner, Mr. Say-
[fol. 610] pol, with anyone whom you indicate to me you have some evidence on, that he has attempted to intimidate a witness.

Mr. Saypol: I equally so, and I expect that your Honor would. I thought that it was a topic that the Court and counsel should be apprised of.

Mr. E. H. Bloch: Thank you, Mr. Saypol. I might say that if I ever found out about any instance, I would.

The Court: As an officer of the court I would expect you to.

Mark these, Mr. Schaeffer, as exhibits. Mark them as Court exhibits. Mark these grand jury minutes two exhibits, one as indicated here and two as indicated over here.

Mr. Phillips: Exhibits for identification?

The Court: For identification.

(Marked Court's Exhibits I to V for identification.)

Mr. Saypol: One further matter on the record: I would like to introduce Mr. Charles Denison, chief of litigation of the Atomic Energy Commission. I would like to have leave to permit him to sit at the counsel table with me.

Mr. E. H. Bloch: No objection.

[fol. 611] In connection with the introduction of these

statements and the grand jury minutes of Elitcher for identification, it is clear, is it not, your Honor, that if the defense does not desire to utilize them in any way that they are not to be used any further in this trial by any party?

Mr. Saypol: Well, now, that is not a fair ruling.

The Court: Wait a minute.

Mr. Saypol: I thought your Honor was agreeing with that.

The Court: I will rule if they don't use these particular statements to cross-examine further, that you may not use these particular statements either to rehabilitate, so-called, the witness ——

Mr. Saypol: Well, am I not in a somewhat unfair position in that respect because ordinarily I couldn't use the statements either to refresh or corroborate a witness in the event of attack, but have made them available to counsel.

The Court: Yes.

Mr. Saypol: Whether they use any or all or none, they ou-t to be available.

The Court: I am sorry. That is not the law. I can't [fol. 612] agree with you, Mr. Saypol. They must make use of them.

Send for the jury.

(The jury enter the jurybox.)

Mr. Saypol: May I address myself to the Court for a moment?

The Court: Yes.

Mr. Saypol: The Court granted permission for Dr. Dodson to sit with me at the counsel table. Dr. Beckerley is here in his place with me. May he sit with me?

The Court: Yes.

Mr. E. H. Bloch: No objection.

The Court: Good morning, ladies and gentlemen. We had a little delay this morning. We had our usual conference at the bench. I hope you will excuse us for it. I appreciate your promptness, however. I understand you have all been very prompt.

Mr. Cohn: We would like Mr. Greenglass back.

DAVID GREENGLASS, resumed the stand.

The Court: Now, Mr. Greenglass, will you please remember to speak up?

The Witness: I will.

Direct examination continued.

By Mr. Cohn:

Q. Now, Mr. Greenglass, I think that on Friday afternoon before we adjourned, we were at the point where [fol. 613] Rosenberg had returned to your apartment to get this information on the atom bomb that he had asked you to write down; is that correct?

A. That is correct.

Q. Will you tell us again—first of all, did you in fact furnish him with written information concerning the atom bomb?

A. I did.

Q. Will you tell us just what information you furnished him with on that day?

A. I gave him a list of scientists who worked on the project. I gave him some sketches of flat type lens molds, and I gave him some possible recruits.

Q. What kind of recruits?

A. For Soviet espionage.

Mr. E. H. Bloch: I move to strike out the latter part of his answer.

The Court: I will strike that out and permit you to tell us what Mr. Rosenberg said to you about recruiting scientists or recruiting anybody to help. What were his words, in substance?

The Witness: He said he wanted a list of people who seemed sympathetic with Communism and would help furnish information to the Russians.

The Court: Very well.

Q. And you furnished him with such a list; is that cor- [fol. 614] rect?

A. I did.

Q. Now I want to come specifically to these sketches

you told us about of this lens. Exactly do you remember how many sketches you gave him?

A. I gave him a number of sketches, showing various types of lens molds.

Q. Was this that lens mold in connection with Dr. Caskey, that you told us about on Friday afternoon, which had been constructed at the shop, the Los Alamos shop in which you were working?

A. That was the same lens mold.

Q. Now, did you give Rosenberg a sketch of the lens mold; did you tell him how the lens mold was used?

Mr. E. H. Bloch: If the Court please, I am going to ask Mr. Cohn not to be leading at this point.

Q. Tell us exactly what you gave Rosenberg with reference to the lens mold.

A. I gave him a sketch of the lens mold. I marked them, A, B, C, the parts of the mold, and I defined what these markings meant.

Q. Where were these definitions contained, on the same sheet of paper?

A. On a separate sheet of paper.

Q. The sketch was on one sheet and the description on another sheet?

A. That is right.

Mr. Cohn: May this be marked for identification, your [fol. 615] Honor?

(Marked Government's Exhibit 2 for identification.)

Q. Now, Mr. Greenglass, have you, at our request, prepared a copy of the sketch of the lens mold which you furnished to Rosenberg on that day in January?

A. I did.

Q. Would you examine Government's Exhibit 2 for identification (handing) and tell me if that is the sketch which you prepared.

A. That is the sketch that I prepared.

Mr. Cohn: We offer it in evidence, your Honor.

Mr. E. H. Bloch: Before I make any objection, may I have a voir dire question here?

The Court: Go ahead.

Mr. E. H. Bloch: When did you prepare this?

The Witness: During this trial, yesterday.

Mr. E. H. Bloch: I object to its introduction upon the ground it is incompetent, irrelevant and immaterial. The witness is here. He testified orally to things. This is not a proper way of corroborating the witness. In fact, it is improper, I submit, to corroborate in this way.

Mr. Cohn: Well, if your Honor wants to hear me on that, I think the jury is certainly entitled to see what the witness has testified he gave to the defendant in this case, what information concerning the atom bomb and things in [fol. 616] connection with it he gave to the defendant in this case.

The Court: In other words, you put this in the same category, as I understand it, of chart evidence. After the witness testifies to something, a chart may be produced for the purpose of enlightening the jury or making it easier for the jury to understand. You are not introducing this as the exhibit that was turned over.

Mr. Cohn: Oh, no, not at all, your Honor. In fact, I will ask Mr. Greenglass——

By Mr. Cohn:

Q. When did you last see the very sketch which you turned over to Rosenberg?

A. In January, 1945.

Q. When you handed it to Rosenberg?

A. That is right.

Q. And you have not seen it since then?

A. No.

The Court: Objection overruled.

Mr. E. H. Bloch: Before your Honor rules, may I ask one more question along your Honor's line of thinking, if I may?

The Court: Go ahead.

Mr. E. H. Bloch: After looking at this Government's Exhibit 2 for identification, are you saying that that paper that you have in your hand represents a true copy of the [fol. 617] sketch that you turned over to Rosenberg?

The Witness: To the best of my recollection at this time, yes.

Mr. E. H. Bloch: Well, then, if your Honor please, I renew my objection, because I submit that this is not analogous to introducing a chart in evidence. A chart is introduced for the purpose of elucidating the jury on matters which may be complex, and it is a sort of over-all picture by which the jury may be enabled to follow certain details. Here, this exhibit is being introduced because it purports, according to this witness, to be a true copy of what he allegedly turned over to Rosenberg. Now, I submit that is a violation of the rule against corroborating the witness by extrinsic evidence while he is on the stand, and I believe it is improper.

Mr. Saypol: May I address myself to the question? I submit, if the Court please, that counsel misunderstands the objective in utilizing this exhibit. It is based entirely on the secondary evidence rule. The actual sketch, obviously, is not available, as the witness has testified. Certainly there may be made available for the use of the jury, in conjunction with the witness's testimony, a recently prepared replica which, as he has testified, to the best of his [fol. 618] recollection is a replica of that which he furnished to the defendant.

Mr. E. H. Bloch: As far as the best evidence rule is concerned, your Honor, I could see the cogency of Mr. Saypol's argument if it would be the contention of the prosecution that this document, which they now attempt to introduce in evidence, was made at or contemporaneously with or prior to the time.

The Court: What you are saying does not go to the basic question of whether or not a foundation has been laid for its introduction. What you are saying goes to the weight to be given to the document.

Mr. E. H. Bloch: I think it goes to both, your Honor. I think it goes to the fact that no proper foundation has been laid under the present——

The Court: I will receive it. Objection overruled.

Mr. E. H. Bloch: I respectfully except.

(Marked Government's Exhibit 2 in evidence.)

By Mr. Cohn:

Q. Now, Mr. Greenglass, while it is being marked, I might ask you——

The Court: Just a moment. Let it be marked.
ernment's Exhibit 2 in evidence, Mr. Greenglass; does that——

Mr. E. H. Bloch: I am sorry, Mr. Cohn, but now I would like to look at it a little more carefully so I may be enabled to follow the witness intelligently.

Mr. Cohn: Certainly, Mr. Bloch (handing).

Mr. E. H. Bloch: Thank you very much. All right.

Q. Addressing yourself to Government's Exhibit 2 in evidence, Mr. Greenglass, does that exhibit contain certain letters, "A", "B", "C"?

A. They do.

Q. Now, what do those letters have reference to? Do they have reference to this other paper?

A. Yes, they have reference to another paper, where I put down the meaning of these letters.

Q. Would you tell us now, as best as you remember it, exactly what descriptive language was contained on this piece of paper you furnished Rosenberg along with this sketch?

Mr. E. H. Bloch: That is objected to, your Honor, on the same grounds that I objected to the introduction of this document.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. "A" refers to the curve of the lens; "B" is the [fol. 620] frame; "C" shows approximately how wide it is.

The Court: All right, now you had better give us that slowly so we can all understand it.

"A" refers to what?

The Witness: The curve of the lens, the outside curve; "B" to the frame; and "C" to the width. It is a four-leaf clover design like; it looks something similar.

Mr. E. H. Bloch: We can't hear the witness, your Honor, I am sorry.

The Witness: It has four curves on it, and these—it is hollow in the center and it was used to pour "H. E." into it.

Q. What do — mean by "H. E."?

A. High explosive. It then took on the shape, the H. E. took on the shape of the mold and the mold was removed and you had a high explosive lens.

Mr. Cohn: Your Honor, may I pass it to the jury?

The Court: Yes.

(Government's Exhibit 2 in evidence passed to the jury.)

Q. I think you have already told us that this lens, mold, along with other things constructed in your shop, were used in connection with experimentation on the atomic bomb; is that correct?

A. They were.

Q. By the way, did you have any conversation with Rosen-
[fol. 621] berg concerning the writing on the descriptive material?

A. I did. My wife——

Mr. E. H. Bloch: Will you fix the time, please?

Q. Will you tell us just when this conversation took place, in relation to the time you turned over the material?

A. It took place in the morning after I had written this information out. Julius came to the house and received this information, and my wife, in passing remark that the handwriting would be bad and would need interpretation, and Julius said there was nothing to worry about as Ethel would type it up, retype the information.

The Court: Excuse me a moment. May I have that answer reread?

(Last question and answer read.)

Q. Did you have any further conversation with Rosenberg on the occasion when you turned over this material?

A. Not at—he asked me to come to dinner, my wife and myself, for an evening a few days later—I can't remember—a day or two later.

Q. At his home?

A. Yes, at his home.

Q. Did you accept the dinner invitation?

A. I did.

Q. Did there come a time when you and your wife did in fact go to Rosenberg's home in response to the dinner invitation?

A. We did.

Q. About how soon after this meeting at which you [fol. 622] turned over the material?

A. It was a day or two later.

Q. Now, where did Rosenberg live at that time?

A. 10 Monroe Street, in Knickerbocker Village.

Q. In Knickerbocker Village?

A. Yes.

Q. Do you remember what time you arrived at his apartment?

A. I would say it was about 7 o'clock or so.

Q. Now, I would like you to tell the Court and jury exactly what happened from the time you entered the apartment on that night, until the time you left? By that I mean, tell us who was there, tell us what was said and by whom?

The Court: What was the date, did you say?

Mr. Cohn: I believe the date was fixed, your Honor, as two or three days or a day or two—two or three days after the meeting in Greenglass' apartment, at which he turned over the information to Rosenberg.

The Court: Very well.

A. When I got to the apartment with my wife, there was Julius and Ethel Rosenberg and a woman by the name of Ann Sidorovich.

Mr. E. H. Bloch: What was that name?

Q. Just stop there for a moment. What did you say that name was?

A. Ann Sidorovich.

Mr. Cohn: May we have this marked for identification, [fol. 623] please?

(Marked Government's Exhibit 3 for identification.)

Q. Now, had you ever met Ann Sidorovich before?

A. I had never met her before, no.

Q. Did you know any members of her family?
A. I knew her husband.
Q. What was his name?
A. Mike Sidorovich.
Q. How long a period of time did you know him?
A. I knew him for some years.
Q. I would like you to examine now Government's Exhibit 3 for identification and tell me if you recognize the people on that picture?
A. This is Mike and Ann Sidorovich.

Mr. Cohn: We offer it in evidence, your Honor. May it be received?

(Government's Exhibit 3 previously marked for identification received in evidence.)

Mr. Cohn: May I exhibit that to the jury, your Honor?
The Court: Yes.

(Government's Exhibit 3 shown to the jury.)

Q. Now, keep your voice up, Mr. Greenglass, and tell us—you have told us who was present, Mr. and Mrs. Rosenberg and this woman, Ann Sidorovich; now, would you tell us exactly what happened on that evening, exactly [fol. 624] what was said and by whom?
A. Well, the early part of the evening we just sat around and spoke socially with Ann and the Rosenbergs, and then Ann Sidorovich left. It was at this point that Julius said that this is the woman who he thinks would come out to see us, who will come out to see us at Albuquerque, to receive information from myself.
Q. What kind of information?
A. On the atomic bomb. And she would probably be the one to come out to see us. We then ate supper and after supper there was more conversation, and during supper—and during this conversation there was a tentative plan brought forth, to the effect that my wife would come out to Albuquerque to stay with me, and when this woman, Ann or somebody would come out to see us, they would go to Denver, and in a motion picture theater they would meet and exchange purses, my wife's purse having this informa-

tion from Los Alamos, and of course, that is the way the information would be transmitted.

Q. Now, was anything said about the reason for Ann Sidorovich being present at the Rosenberg's home on that particular night when you were there?

A. Yes, they wanted us to meet this Ann Sidorovich, so that we would know what she looked like; and that brought up a point, what if she does not come?

[fol. 625] Q. You mean, there was a possibility that somebody else would come?

A. That's right. So Julius said to my wife, "Well, I give you something so that you will be able to identify the person that does come".

Q. In other words, if Ann Sidorovich would come, she was up in the apartment that night, you were up in the apartment that night; she knew what you looked like; you knew what she looked like; but if somebody else would come, this would be mutual identification; is that right?

Mr. E. H. Bloch: Mr. Cohn, please don't repeat the answer.

Mr. Cohn: If I do so, your Honor, it is for the purpose of clarity. Strange names are coming in. However, I won't do it.

Mr. E. H. Bloch: You know why I don't want you to do it, because sometimes re-emphasis——

Mr. Cohn: I will settle it by saying that I won't do it, your Honor.

May we have the last from the witness?

(Last answer read.)

Q. All right, go ahead from there.

A. Well, Rosenberg and my wife and Ethel went into the kitchen and I was in the living room; and then a little while later, after they had been there about five minutes or so, they came out and my wife had in her hand a Jello [fol. 626] box side.

Mr. E. H. Bloch: Side?

Mr. Cohn: Side.

Mr. E. H. Bloch: S-i-d-e?

Mr. Cohn: That's right.

Q. You mean, the side of an ordinary Jello box?
A. That's right.

Q. About what size Jello box, the small size?
A. The kind you buy in your home.

Q. Right.

A. And it had been cut, and Julius had the other part to it, and when he came in with it, I said, "Oh, that is very clever", because I noticed how it fit, and he said, "The simplest things are the cleverist".

Q. Now, let me see if I understand that. Your wife had one side; is that correct?
A. That's right.

Q. Who kept the other side?
A. Julius had the other side.

Q. Was there any conversation as to what would be done with these two sides?

A. Well, my wife was to keep the side she had, and she was to use it for identification with the person who would come out to see us, and at this point we discarded the idea, discarded the idea of going to Denver.

[fol. 627] Q. Now, I want to stay with the Jello box for a minute here. Am I correct in assuming that the last time you saw the other part—your wife had one part of this side of the Jello box?
A. That's right.

Q. And the last you saw of it on that night was in Rosenberg's hand; is that correct?
A. That's right.

Mr. Cohn: May this be marked for identification, please?

(Marked Government's Exhibit 4 for identification.)

Mr. Cohn: Your Honor, at this point I would like—this will be quite important—to have the witness, as best he remembers it, take this Jello box and cut the correct side into two parts, just as he remembers it was cut on that night, in January of 1945, and I would like to ask him to indicate to the Court and jury which side he kept and which side Rosenberg kept. May I do that?
The Court: All right.

Q. Will you take Government's Exhibit 4 for identification and this pair of scissors, and address yourself to the appropriate side and cut it into two pieces (handing to witness)? Cut it into two pieces resembling the two pieces you saw that night in Rosenberg's apartment?

(Witness cuts exhibit.)

Q. The side that was cut was one of the thin sides; is that [fol. 628] correct?

A. That's right; this is the side I had (exhibiting).

Q. That was the side you had?

A. That's right.

The Court: Mark that for identification.

Mr. Cohen: Yes, and may we have this marked for identification as Government's Exhibit 4-A?

(Marked Government's Exhibit 4-A for identification.)

Q. Where did you last see this other side on that night?

A. In Julius' hand.

Mr. Cohn: May we have the other side marked as 4-B for identification, your Honor?

(Marked Government's Exhibit 4-*b* for identification.)

Mr. E. H. Bloch: Just to clarify myself, if I may, 4-A——

The Court: 4-A is——

Mr. E. H. Bloch: Is the side which the witness kept.

The Court: That is right.

Mr. E. H. Bloch: And 4-B is the side that Rosenberg is alleged to have retained.

The Court: It was, which was last seen in his hand.

Mr. E. H. Bloch: Pardon me, which was last seen in his hand.

[fol. 629] Mr. Cohn: Right, on that night in January, 1945.

We offer them in evidence, your Honor, 4-A and 4-B.

(Government's Exhibits 4-A and 4-B previously marked for identification received in evidence.)

Mr. Cohn: May I exhibit them to the jury, your Honor?

The Court: Yes.

(Government's Exhibits 4-A and 4-B shown to the jury.)

By Mr. Cohn:

Q. Now, I think Mr. Greenglass, we were at the point where you were continuing with further conversation that was had after this Jello box incident had been effected; would you continue and tell us just what was said and by whom?

A. Well, it was at this point that the plan to meet in Denver was discarded, and I suggested the Safeway store, meeting the person we were to meet at a Safeway store, outside, outside of the Safeway store, in Albuquerque, and this was thought to be a pretty good idea. The exact date was left in abeyance, since my wife would follow me out to Albuquerque later and that could be set in that time, I mean, between when I left to go back to Los Alamos and when she came out.

[fol. 630] Q. The date was left in abeyance and would be set before your wife joined?

A. That is correct.

Mr. E. H. Bloch: If the Court please, I am not interfering with this witness' testimony, but very frankly, I am a little confused as to who said what and who said other things?

The Court: All right.

Mr. E. H. Bloch: And I haven't interrupted. He is putting in "since" and giving some of us difficulty in understanding him.

By the Court:

Q. You said that the idea of Denver was discarded; was that at that same meeting at Julius Rosenberg's home?

A. That's right.

Q. Now, at this point, that is the point where the Jello box was cut up, did I understand that this Ann Sidorovich had already left?

A. Oh, she had left.

Q. You and your wife and Mrs. Rosenberg and Julius Rosenberg were present; is that right?

A. That's right.

Q. You are in the living room and they go into the kitchen on this Jello box situation?

A. That's right.

Q. You say her husband was not present?

A. Her husband was not present.

Q. That is right. Now, at what point—before you left [fol. 631] that evening you had decided to abandon the idea of meeting in a movie house in Denver?

A. That is right.

Q. Then who suggested the Safeway Store?

A. I did.

Q. And who said it was a good idea?

A. Julius said it was a good idea.

The Court: Very well. Let me ask you one other question: Did you say what part of the Safeway Store you would meet at?

The Witness: In front of it, not in the store.

The Court: In front of it.

The Witness: That's right.

By Mr. Cohn:

Q. Now I think the last thing you said was the date, the actual date of this meeting was left up in the air until such time as your wife joined you, and when she came out she would know the further details?

A. That is correct.

Q. Now, was there any further conversation between you and your wife and the Rosenbergs on that evening?

A. Well, the Rosenbergs told my wife that she wouldn't have to worry about money because it would be taken care of—I mean, she would be able to get out there and live out there, if she wasn't able to work, the money would be forthcoming.

By the Court:

[fol. 632] Q. Was that in your presence?

A. In my presence.

Q. Both of them said that?

A. Julius, and Ethel backed it up. Earlier in the evening, during these conversations, my wife had remarked to Ethel that she had looked kind of tired and she said she was tired because she——

By Mr. Cohn:

Q. Who said this?

A. My wife had remarked to Ethel that she looked tired.

Q. Ethel looked tired?

A. And Ethel remarked that she was tired between the child and staying up late at night, keeping—typing over notes that Julius had brought her—this was on espionage.

Mr. E. H. Bloch: I move to strike out the last.

The Court: Did she say that?

The Witness. She said "in this work". She also stated that she didn't mind it so long as Julius was doing what he wanted to do.

Q. During this evening, was any reference made by either of the Rosenbergs, to the material which you had turned over to Julius a couple of days before?

A. Well, we discussed the lenses—we generally talked shop about what I had done at Los Alamos, and we discussed lenses all during this evening, and, you know, whatever was going on at Los Alamos, scientists——

[fol. 633] Q. Was anything said about——

A. Scientists, of that nature; things of that nature; and he said that he would like me to meet somebody who would talk to me more about lenses.

Q. Did he tell you who this person he wanted you to meet was?

A. He said it was a Russian he wanted me to meet.

Q. Did he give you any further identification on that night?

A. No.

Q. Now, after the conclusion of this evening, did you return home?

A. At the end of this evening I returned home.

Q. About what time do you think you left Rosenberg's apartment?

A. Oh, it was twelve or maybe possibly later.

Q. Did you and your wife have any further conversation about anything that had transpired when you returned home?

A. Well, she showed me the piece, the Jello side, the Jello box side, and she put it in her wallet.

Q. In her wallet?
A. That's right.

Mr. E. H. Bloch: If the Court please, I am objecting to any conversation between this witness and his wife outside of the presence of the defendant Rosenberg and the other defendants, and likewise any acts that may have taken place, in which the Rosenbergs weren't present. I [fol. 634] just want to reserve objection for the record.

The Court: Very well. You know the ruling; you know the reason for my ruling.

Mr Cohn: Of course, your Honor, I offer them as statements by co-conspirators in furtherance of the conspiracy.

Q. Now, did anything further come of Julius's statement that he wanted you to discuss this lens with the Russian?
A. Yes.
Q. Tell us.
A. A few nights later—well an appointment was made for me to meet a Russian on First Avenue, between 42nd and 59th Streets—it was in that area.
Q. Who made the appointment?
A. Julius made the appointment.
Q. When was it in relation to the dinner meeting in January?
A. It was a few days after. I took my father-in-law's car and drove up there. It was about eleven-thirty at night. I remember coming up the street. It was quite dark and there was a lighted window. I passed that in parking—it was a saloon—I parked up the block from it, and in a little while Julius came around the corner, looked into the car, saw who I was; said, "I will be right back": brought back a man; introduced the man to me by first name, that I don't recall at this time, and the man got into the car [fol. 635] with me. Julius stayed right there and we drove around——
Q. Let me see if I understand it. When you say "Julius stayed right there", was Julius in the car or not?
A. He was not in the car.
Q. He merely effected the introduction?
A. He just introduced me to him.
Q. And remained on the street?

A. And remained on the street.

Q. Where did you drive?

A. Well, we drove all over that area. He just told me to keep driving and he asked questions about lenses.

Q. Did he ask you specifically about this high explosive lens?

A. He did. He asked about high explosive lenses and he wanted to know pertinent information, type of H. E. used.

Mr. E. H. Bloch: I move to strike out "pertinent" as a conclusion.

The Court: Strike out "pertinent". Tell us what he wanted to know.

The Witness: He wanted to know the formula of the curve on the lens; he wanted to know the H. E. used, and means of detonation; and I drove around——

The Court: And what, means of detonation?

The Witness: That's right; and I drove around, and [fol. 636] being very busy with my driving, I didn't pay too much attention to what he was saying, but the things he wanted to know, I had no direct knowledge of and I couldn't give a positive answer.

Q. Now, about how long did this drive with the Russian last?

A. About twenty minutes or so.

Q. Where did it terminate?

A. At the same place that it originated.

Q. Did you see Julius any more on that night?

A. Yes, he came back—I mean, he was around there, and the Russian got out and they went off together, and I drove back home.

Q. Did Julius give you any instructions?

Mr. E. H. Bloch: Now, if the Court please, just a second. I move to strike out the characterization of the man that he met, especially in the last answer, as "Russian".

The Court: That is denied. The testimony, as I understand it, is that Julius said he wanted to introduce him to a Russian.

Mr. E. H. Bloch: Yes, but whatever the defendant Rosenberg may have said doesn't substitute for the fact, which

I contend the prosecution must prove, namely, that this man was a Russian or a Russian subject or citizen.

The Court: We will understand that when he said "a [fol. 637] Russian" we will accept that the Russian that he is characterizing as such was the man who Mr. Rosenberg had characterized as "a Russian".

By Mr. Cohn:

Q. Did Julius give you any instructions as to where you should go and what you should do after you concluded this drive with the man who you described as "a Russian"?

A. He said, "Go home now. I will stay with him". He was going to have something to eat with him.

Q. Did you in fact return home?

A. I went home.

Q. Did you tell you wife where you had been?

A. Yes, I told my wife where I had been.

Q. Now I think you told us you arrived in New York on this furlough on January 1, 1945; is that correct?

A. That is correct.

Q. About when did you leave New York and return to Los Alamos?

A. About the 20th.

Q. Did your wife go with you?

A. She did not go with me.

Q. Did there come a time when she joined you at Albuquerque?

A. She did.

Q. Will you tell us when that was?

A. That was in the springtime, it was about March or April—early—late March, early April, I think.

Q. Of 1945?

A. Of 1945.

[fol. 638] Q. Where did your wife live when she got out to Albuquerque?

A. Well, at first she stayed in a fellow G. I.'s apartment, a man by the name of Delman. He and his wife had gone east on furlough. Then she stayed at a fellow by the name of Spindel's apartment. Then we had our own place.

Q. Now, when you say you had your own place, was it a house, an apartment, or what?

A. It was an apartment at 209 North High Street.

Q. 209 North High Street. That was in Albuquerque?

A. In Albuquerque.

Q. Were you able to go home every night?

A. No, I wasn't.

Q. When did you go to the apartment?

A. Well, usually Saturday night. I would start down and get there sometime Saturday evening.

Q. When would you return to Los Alamos?

A. Sunday—I mean Monday, early in the morning.

Q. Were you in this apartment—was your wife in this apartment, were you in there over the weekends during the month of May and during the month of June, in 1945?

A. I was.

Q. Now, Mr. Greenglass, did Ann Sidorovich ever come out to see you?

A. No, she didn't.

Q. Did somebody else come out to see you?

A. Yes.

[fol. 639] Q. Was it a man or woman?

A. It was a man.

Q. And when was this visit?

A. First Sunday in June, 1945.

Q. Did you at that time know the name of this man?

A. I did not.

Q. Do you now know his name?

A. Yes, I do.

Q. What is it?

A. Harry Gold.

Mr. E. H. Bloch: Your Honor, again I would like to state for the record that I am objecting to anything that happened out in New Mexico, outside the presence of the defendant Rosenberg, and more specifically, upon the ground that there is nothing in this witness's previous testimony to lay the foundation for the introduction of this evidence, reflected by the last question or by the last two questions.

The Court: That last objection is very vague, but there

is just no question in my mind as to the competence of this evidence, so I will overrule your objection.

Mr. E. H. Bloch: I respectfully except.

(Government's Exhibit 5 marked for identification.)

Q. Do you recognize this picture, Mr. Greenglass (showing)?
A. Yes, I do.
Q. Who is that?
A. That is Harry Gold.

Mr. Cohn: We offer it in evidence, your Honor.

(Government's Exhibit 5 for identification received in [fol. 640] evidence.)

The Court: Excuse me. Where did he come to see you, in Albuquerque?
The Witness: In Albuquerque.
Mr. Cohen: Would your Honor want to take the morning recess at this point?
The Court: Yes. We will take a recess at this point.

(Short recess.)

(Jury in box.)

Mr. E. H. Bloch: If the Court please, may I ask whether the prosecution would have any objection to offering for identification, the remaining portions of the Jello box, from which the witness cut the sides?
Mr. Cohn: It has already been done, your Honor.
The Court: It has already been done.
Mr. E. H. Bloch: It is marked?
Mr. Cohn: Exhibit 4 for identification and the two parts have been received in evidence.
Mr. E. H. Bloch: 4-A and 4-B. I was a little confused about that. Thank you very much.
Mr. Cohn: Did you want to examine it?
Mr. E. H. Bloch: No, thank you very much.

[fol. 641] Q. When did you say it was that Harry Gold came to your house, Mr. Greenglass?
A. It was the third Sunday in June 1945.

Q. What time of day?
A. It was in the morning.
Q. Who was home?
A. I and my wife were home.
Q. Would you tell us exactly what happened from the first minute you saw Gold?

Mr. E. H. Bloch: My objection still stands, your Honor.
The Court: Yes, overruled.
Mr. E. H. Bloch: Exception.

A. There was a knock on the door and I opened it. We had just completed eating breakfast, and there was a man standing in the hallway who asked if I were Mr. Greenglass, and I said yes. He stepped through the door and he said, "Julius sent me," and I said "oh," and walked to my wife's purse, took out the wallet and took out the matched part of the Jello box.
Q. That was Government's Exhibit 4-A, is that correct?
A. The Jello box.
Q. The piece you retained that night?
A. Yes.
Q. After you produced that did Gold do anything?
A. He produced his piece and we checked them and they fitted, and the identification was made.
Q. In other words, he had——
[fol. 642] A. He had the other part of the box.
Q. And you had last seen that in Rosenberg's apartment that night in January, 1945?
A. That is right.
Q. Now, after mutual identification was effected, did you have any conversation with Harry Gold?
A. Yes. I offered him something to eat and he said he had already eaten. He just wanted to know if I had any information and I said, "I have some but I will have to write it up. If you come back in the afternoon I will give it to you." I started to tell him the story about one of the people I put into the report, and he——
Q. Who was one of the people you put into the report?
A. A fellow by the name of Bederson, and he cut me short.

Q. What kind of person was he? Why did you put him in the report?

A. Well, I considered him good material for recruiting into espionage work.

Mr. E. H. Bloch: I move to strike out the part of the answer with respect particularly to the words "espionage work" as reflecting only the operation of this witness's mind.

The Court: No, I will overrule it. The witness has already testified that Mr. Rosenberg had asked him on a previous occasion to send such names of anybody whom [fol. 643] he considered to be a good recruit, and I am overruling the objection.

Mr. E. H. Bloch: Then, if the Court please, may I ask Mr. Cohn to clarify what report this witness is referring to?

The Court: Yes.

Mr. Cohn: I will be glad to do that, your Honor.

The Court: Yes.

Q. In which report had you mentioned the name which you discussed with Gold?

A. I mentioned it in that particular report that I gave him that day.

Q. The report you gave Gold later that day?

A. Yes.

Q. You discussed the name before you embodied it in the report?

A. That is right.

Q. Tell us just what was said by you and Gold.

Mr. E. H. Bloch: When was this? Morning or afternoon?

Q. Mr. Bloch wants to know when was it?

A. This particular time was the morning. He cut me short on the business with Bederson. He said he didn't want to know about it and he left and I got to work on the report.

Q. Where did you work on the report?

A. Right in the livingroom, my combination livingroom [fol. 644] and bedroom there.

Q. Tell us exactly what you did.

A. I got out some 8 by 10 ruled white line paper, and I drew some sketches of a lens mold and how they are set up in an experiment, and I gave descriptive material that gives a description of this experiment.

Q. Was this another step in the same experiment on atomic energy concerning which you had given a sketch to Rosenberg?

A. That is right, and I also gave him a list of possible recruits for espionage.

Mr. E. H. Bloch: I move to strike out the last two words, "recruits for espionage."

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except. Of course, I don't like to be popping up and down, your Honor. I want to make it clear that I am objecting to this entire line of testimony with respect to this incident between the witness and Gold in New Mexico as not binding upon the defendant.

The Court: Overruled.

The Witness: I gave this list of names and also sketches and descriptive material.

Q. What time of day was it that you gave this material to Harry Gold?

A. It was later in the afternoon. He came back about [fol. 645] 2.30 or 3 o'clock and picked it up.

Q. Did all these sketches and descriptive material concern experimentation on the atomic bomb?

A. That is right.

Q. Tell us exactly what happened when he came back at 2.30?

A. Well, when he came back to the house he came in and I gave him the report in an envelope and he gave me an envelope which I felt and realized there was money in it and I put it in my pocket.

Q. Did you examine the money at that point?

A. No, I didn't.

Q. Did you have any discussion with Gold about the money?

A. Yes, I did. He said, "Will it be enough?" And I said, "Well, it will be plenty for the present." And he

said, "You need it," and we went into a side discussion about the fact that my wife had a miscarriage earlier in the spring, and he said, "Well, I will see what I can do about getting some more money for you."

Q. Was there any further discussion with Gold?

A. Well, he wanted to leave immediately and I said, "Wait, and we will go down with you," and he waited a little while. We went down, and we went around by a back road and we dropped him in front of the USO. We [fol. 646] went into the USO, and he went on his way. As soon as he had gone down the street my wife and myself looked around and we came out again and back to the apartment and counted the money.

Q. How much was it?

A. We found it to be $500.

Q. What did you do with the money?

A. I gave it to my wife.

Q. Going back to these sketches which you gave to Harry Gold, do you remember just what sketches you gave to Harry Gold concerning a high explosives lens mold on that occasion?

A. I gave sketches relating to the experiment set up; one showing a flat—the face of the flat type lens mold.

Q. Face view?

A. Face view of the flat type lens mold.

Q. Have you prepared, at our request, a sketch of this face view?

A. I have.

Mr. Cohn: Let this be marked for identification.

(Marked Government's Exhibit 6 for identification.

Q. Would you examine Government's Exhibit 6 for identication? By the way, you prepared that on June 15, 1950, is that correct?

A. I did.

The Court: Well, 6 for identification, I take it, is a replica of——

[fol. 647] Mr. Cohn: Well, 6 for identification was prepared on June 15, 1950, your Honor, last year.

The Court: Oh, I see.

Q. In answer to his Honor's question is this to the best of your recollection an accurate replica of the face view which you gave Harry Gold in June, 1945?

A. That is right.

Mr. Cohn: I will now offer it in evidence, your Honor.

Mr. E. H. Bloch: Before ruling, may I have one question on the voir dire?

The Court: Go ahead.

By Mr. Bloch:

Q. When you made this sketch on June 15, 1950, and I am referring now to Government's Exhibit 6 for identification, did you rely solely on your memory?

A. I did.

Mr. E. H. Bloch: Now if the Court please, I am objecting to the introduction of this exhibit in evidence upon the same ground which I used in connection with the introduction of one of the previous exhibits. I think it is 2, if I am not mistaken.

The Court: I am admitting it. The weight to be given to it will be entirely up to the jury, but I believe a foundation has been laid for it, and it is being done for the purpose [fol. 648] of permitting the jury to visualize what was turned over, and only in so far as that; it is not being introduced as the document which was given to Gold because, for apparent reasons, the Government couldn't introduce that at this time.

Mr. E. H. Bloch: I respectfully except.

The Court: I will admit it. The weight to be given to it will simply be a question for the jury.

Mr. E. H. Bloch: I respectfully except.

(Government's Exhibit 6 for identification received in evidence.)

The Court: Is this to your present knowledge an exact replica of the sketch which you turned over even to the extent of the comments on the side?

The Witness: It is.

Mr. Cohn: Your Honor, Mr. Saypol reminds me that I did not show the jury the picture of Mr. Gold (handing to jury).

[fol. 649] By Mr. Cohn:

Q. Will you address yourself to Government's Exhibit 6 in evidence and tell the jury what that represents?

A. I showed a high explosive lens mold. I showed the way it would look with this high explosive in it with the detonators on, and I showed the steel tube in the middle which would be exploded by this lens mold.

Q. Now, did you prepare on that Sunday in June, 1945 and give to Harry Gold on that same day, any other sketches concerning this high explosive lens mold for atomic energy?

A. I showed him a schematic view of the lens mold set-up in an experiment.

Q. Now, have you similarly prepared for us a replica as you remember it, of the sketch which you gave Harry Gold on that day?

A. I did.

By the Court:

Q. What do you call this sketch, a schematic view of it?

A. Yes. Well, none of those are to scale. So they are all schematic.

Q. What is the difference between 7 for identification, now being marked, and 6?

A. Well, this shows an experiment.

Q. Actually, the mold being used in an experiment?

A. That is right. The set-up.

(Marked Government's Exhibit 7 for identification.)

[fol. 650] By Mr. Cohn:

Q. Is this the sketch Mr. Greenglass (handing to witness)

A. Yes, it is.

Mr. Cohn: We offer it, your Honor.

Mr. E. H. Bloch: May I ask a question?

Mr. Cohn: Surely.
Mr. E. H. Bloch: To protect the record.

By Mr. E. H. Bloch:

Q. Mr. Greenglass, in connection with Government's Exhibit 7 for identification, can you tell us when you prepared this?
A. I prepared it during this trial.
Q. When specifically, if you remember?
A. Yesterday.
Q. And did you rely solely upon your memory in preparing this?
A. I did.

Mr. E. H. Bloch: Now, if the Court please, I make the same objection upon the same grounds heretofore urged.
The Court: Same ruling.
Mr. E. H. Bloch: (Continuing) To the introduction of Exhibits 2 and 6.
The Court: Same ruling.
Mr. E. H. Bloch: I respectfully except.

(Marked Government's Exhibit 7.)

[fol. 651] By the Court:

Q. Now, the comments on the bottom of No. 7: Were they the same comments you had on the sketch?
A. No. That is just to identify it.
The Court: Oh, well. No, no comments.

By Mr. Cohn:

Q. In other words, that is to describe this, but your recollection is you did not put such description on the same piece of paper when you gave it to Gold?
A. No.

Mr. Cohn: We have no objection at all if that description is cut off, your Honor.
Mr. E. H. Bloch: I can't even answer that, Mr. Cohn, because I am objecting to the introduction of the document.
Mr. Cohn: You don't even want to see it cut off.

Q. Now, you had better look at this in altered form, Mr. Greenglass. Is this the sketch?

A. That is the sketch.

Q. Does this sketch, Government's Exhibit 7 in evidence similarly have letters such as the first one, A, B, C and D, and so forth?

A. Yes.

Q. What do those letters refer to?

A. They refer to the parts of this sketch.

Q. Were letters such as that on the sketch which you [fol. 652] gave to Gold?

A. That is right.

Q. Did those letters refer to descriptive material?

A. They did.

Q. Where was this descriptive material?

A. On a separate sheet of paper.

Q. Did you give that descriptive material to Gold?

A. I did.

Q. Will you tell us the language you used on the separate piece of paper in describing this exhibit to Harry Gold?

Mr. E. H. Bloch: I am sorry. I would like it to be clarified, has this exhibit already been marked in evidence?

The Court: Yes.

Mr. E. H. Bloch: May I ask that I see it for just a moment so I can follow this?

(Mr. Cohn hands to Mr. E. H. Bloch.)

Mr. E. H. Bloch: May I say at this time, your Honor, in view of the last question and in view of the witness' previous testimony, I object to the introduction of this last exhibit and ask that it be stricken from the record, and I likewise ask that Government's Exhibits 2 and 6 be stricken from the record upon the same ground. The exhibit now in evidence, referring to 7, I believe, as well as 6 and 2, have no meaning without the descriptive material [fol. 653] which this witness alleged or states that he gave to Gold at the time he turned over these exhibits. The gist of my argument is that in addition to the other objections that I urged, that this represents a truncated, distorted, abortive picture of what the Government is trying to show

and what this witness, I think, is trying to respond to in answer to Mr. Cohn's questions. I hope that I am making myself clear.

The Court: You are making yourself clear, yes, but I don't agree with you at all. I believe that he is describing verbally the meaning of the lettering on the exhibits. What you are saying is that he must produce a paper that describes it. He is describing it verbally. I overrule your objection.

Mr. E. H. Bloch: I respectfully except.

Mr. Cohn: Obviously, your Honor, we could have had it written on paper, but the witness' words speak for themselves. We wanted the Court and jury to see what the think looked like, the thing he was addressing himself to.

The Court: Yes.

By Mr. Cohn:

Q. Now, would you tell us just what you wrote on this other sheet of paper to describe this exhibit and the letters contained thereon?

[fol. 654] Mr. E. H. Bloch: That is objected to, your Honor.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. "A" is the light source which projects a light through this tube "E," which shows a camera set up to take a picture of this light source. Around the tube it is a cross-section of the high explosive lens "C" and a detonator "B" showing where it is detonated, and the course is that when the lens is detonated it collapses the tube, implodes the tube, and the camera through the lens "F" and the film "D" shows a picture of the implosion.

Q. By the way, Mr. Greenglass, I think you have already told us you knew at all times that all of these sketches and descriptive material were secret?

A. I did.

By the Court:

Q. Were there constant experiments going on?
A. Constant.
Q. And the sketches in 6 and 7 were what were considered an advance on these sketches marked as Government's Exhibit 2?
A. Yes.
Q. Well, let us eliminate the word "Advance"; they were just another step?
A. That is right.

Mr. Cohn: In line with your Honor's explanation, we have now arrived at the point where we have the secured permission of the Court to interrupt the testimony of Mr. [fol. 655] Greenglass and put someone on the stand, concerning these other matters.

Mr. Saypol: Your Honor's remarks were quite pertinent.

Mr. E. H. Bloch: I object to Mr. Saypol's statement that your Honor's remarks were quite pertinent. I think the Court itself spontaneously realized that there was a question in your Honor's mind which has not been proved by any evidence——

The Court: No, I didn't realize anything of the kind. Please don't comment on what I have said.

Mr. E. H. Bloch: Well, I am objecting to Mr. Sapyol's statement.

The Court: We will strike Mr. Saypol's statement and strike yours, too.

(Witness Greenglass temporarily excused.)

[fol. 656] Walter S. Koski, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Dr. Koski, what is your profession?
A. Physical chemistry.

Q. You have heard us suggest to witnesses that they speak up loudly and to keep you in the same category, we will ask you to.

You say you are a physical chemist? Is that what you said?

A. I am.

Q. Are you engaged in that capacity now?

A. I am.

Q. Where are you so engaged?

A. Johns Hopkins University.

Q. Exactly in what capacity are you so engaged at John Hopkins?

A. I am associate professor of physical chemistry.

Q. Collaterally, do you have any other association in your profession?

A. I am consultant at the Brookhaven National Laboratories.

Q. Consultant in what?

A. I am corroborating in a program which has as its objective to measure certain properties of radio-active nuclei.

Q. Nuclear chemistry?

A. Nuclear chemistry or nuclear physics.

[fol. 657] Q. What activity so far as is related to your field is conducted at Brookhaven?

A. Nuclear chemistry.

Q. Is that something related to some sort of measurements?

A. It relates to the measurement of certain properties of radio-active nuclei.

Q. What has been your education?

A. I have a Ph. D. in physical chemistry.

Q. Is that from Johns Hopkins, too?

A. It is.

Q. When?

A. June, 1942.

Q. What was your employment from 1942 to 1944?

A. I was a research chemist at the Hercules Powder Company.

Q. In 1944 did you become associated with the United States Government?

A. I did.

Q. In what capacity?

A. As an engineer at the Los Alamos Scientific Laboratories.

Q. How long did you continue your work there?

A. Up to about September, 1947.

Q. That is about the time that you became associate professor of chemistry at Johns Hopkins?

A. That was.

Q. That was also the time when you took on this retainer as consultant at Brookhaven Laboratories?

A. It was.

Q. That is the Brookhaven National Laboratories, to be exact?

A. Correct.

[fol. 658] Q. Referring now to this period between 1944 and 1947 when you were at Los Alamos, can you tell me generally what instructions were issued to you, if any, concerning the character of the work that was being done there, what your position was to be in respect to publicization?

Mr. A. Bloch: That is objected to on the ground that it is not binding on the defendant and it is heresay.

The Court: Overruled.

Mr. A. Bloch: And therefore incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. A. Bloch: Exception.

A. We were informed that all work done at Los Alamos was of a highly classified nature.

Q. When you say "classified" do you mean that it was restricted or secret?

A. Secret.

Q. Was that knowledge imparted to you in the form of instructions on one or more occasions?

A. It was imparted to us verbally and by written material.

Q. Is that the atmosphere that prevailed in connection with all of the work that was conducted there?

Mr. E. H. Bloch: I object to the word "atmosphere."
[fol. 659] The Court: All right. Strike it out.

Q. Prior to your arrival at Los Alamos in 1944, did you have knowledge of the work that was going on there?

A. I did not.

Q. Did there come a time when you learned the nature of the activities?

A. There did.

Q. (Continuing) That were being conducted there?

A. There did.

Q. Just reverting for a moment, Doctor, remember, we were discussing secrecy and restriction at Los Alamos: Have you ever seen that before (showing paper to witness)?

A. Yes, I have.

Q. Will you tell us the circumstances under which you say it and when?

A. This was—this is a restricted document that was sent to all people coming into the laboratory.

Q. Did you read it at the time?

A. I did.

Q. Did you familiarize yourself with the contents?

A. I did.

Q. Did you observe as well as you could the instructions that were contained in Government's Exhibit 1?

A. I did.

Q. Those related to what?

A. Related to security and the secrecy of all technical information.

Q. Going forward now at the point where you were [fol. 660] interrupted, you say there came a time when you learned after arrival, what the nature of the work was that was being done at Los Alamos?

A. Correct.

Q. What was the knowledge that you acquired as to the nature of the work?

A. The objective of the laboratory was to construct a nuclear weapon or atomic bomb.

Q. At this point will you tell us whether you performed any particular phase of that work, research, I take it, incidental to the development or incidental to the project?

A. I did.

Q. What did your work involve?

A. My work was associated with implosion research connected with the atomic bomb.

Q. So that we, as laymen may understand, when you say implosion research, does that have something to do with explosives?

A. The distinction between explosion and implosion is in an explosion the shock waves, the detonation wave, the high pressure region is continually going out and dissipating itself. In an implosion the waves are converging and the energy is concentrating itself.

[fol. 661] Q. I take it, concentrating itself toward a common center?

A. Toward a common center.

Q. In other words, in explosion it blows out; in implosion it blows in?

A. Yes.

Q. Is implosion one of the physical reactions incident to the over-all action in the atomic bomb?

A. It is.

Q. So, as I understand you, your precise job was to make experimental studies relating to this phenomena of implosion?

A. It was.

Q. Mr. Koski, in the performance of that work, did you have occasion to use what has been called here a lens, a device called a lens?

A. I did.

Q. What is the lens as you knew it in connection with your experiments?

A. A high explosive lens is a combination of explosives having different velocities and having the appropriate shape so when detonated at a particular point, it will produce a conver-ing detonation wave.

Q. Well, once again, so that we as laymen might understand, I take it our common conception of a lens is a piece of glass used to focus light, is that right?

A. Yes, that is right.

Q. What is the distinction between a glass lens and the type of lens you were working on?

A. Well, a glass lens essentially focuses light. An ex-
[fol. 662] plosive lens focuses a detonation wave or a high pressure force coming in.

Q. What are the physical steps which are involved and which were involved in the production of a lens of the type you have described?

A. The procedure in general was to first make a design of this lens. Then I would go down to the Theta shop which was one of the shops which constructed such material for us.

Q. I take it the design for the mold would be prepared by you or under your supervision?

A. Yes.

Q. Then by the same token, the design or the sketch, we may call it that, may we not?

A. Yes.

Q. Would then be taken by you or somebody under your supervision, probably you, to the Theta shop for mechanical work incidental to its manufacture?

A. Correct.

Q. And then the mold having been manufactured in the Theta shop—that was a machine shop?

A. That was a machine shop.

Q. What would you do with the mold in relation to the explosive for the component part of the lens?

A. This mold was taken out to our laboratory, at a remote site. There this mold was used to cast the high explosive necessary in this lens.

[fol. 663] Q. You say to test the high explosive?

The Court: Cast.

The Witness: Cast.

Q. That is, to shape the explosive?

A. That is right.

Q. In the course of the conduct of those experiments, did you have occasion to utilize different and successively changing designs of lenses?

A. We did.

Q. In other words, as you developed a lens and tested it and experimented with it, the results that you obtained would be utilized by you in the development, in the de-

sign of other lenses which would make up for any observed defect in preceding lenses?

A. They were.

Q. In this work about that time, that is, around 1945, starting the latter part of 1944 into 1945 up to the middle of 1945, did you work particularly on what is known as a flat type lens?

A. I did.

Q. Was this flat type lens and your related experiments, were they involved in the development of the atomic bomb?

A. They were.

Q. Now, in the course of your work when you required a lens of your own intended design or your idea, will you describe for us the procedure which you would follow and which you did follow to the end that you should [fol. 664] ultimately have a mold for the lens?

A. I went down to the Theta shop and there discussed with the people in charge of the shop——

Q. Do you remember their names?

A. Mr. Fitzpatrick and Mr. Marshman. They were sergeants at the time. I told them what we needed, gave them rough sketches and verbally explained whatever information they needed to construct this mold for us.

Q. About that time did you—do you have a recollection of having seen the defendant Greenglass in the Theta shop?

A. I have seen Mr. Greenglass in the Theta shop.

Q. Considering the nature of the work that you had with high explosives, what was the physical location of your laboratories and your experimental area in relation to, say, the Theta shop or the balance of the project?

A. We had offices and small laboratories in the same area that the Theta shop was located in. Our actual experimental work, however, was done at a remote site.

Q. Were there reasons for conducting your work at a remote site?

A. The reasons were that we were handling large amounts of high explosives and they were detonated, and there were very heavy shocks.

Q. Now, you have told us in the course of your ex-

[fol. 665] perimentation several different models of the flat type lens were prepared under your instructions, is that right?

A. That is correct.

Q. Now, once again will you explain why that was necessary?

A. Would you repeat that question?

Q. I think you have told us already that it was necessary to have different models, that is, as you progressed, and as you observed the results of experiments, and you varied the design of the lens itself; that is the form in which the explosive was contained in the lens?

A. Correct.

Q. Was that work at Los Alamos, your experiments, classified as secret?

A. They were.

Q. Did that apply to all technical work that was being conducted at Los Alamos?

A. It did.

Q. I show you Government's Exhibit 1—by the way, just withdrawing that: You have been in attendance here and you have heard the witness, Greenglass's testimony, the defendant Greenglass's testimony, have you not?

A. I have.

Q. I show you Government's Exhibit 2, rather. Will you examine that, please? Do you recognize that exhibit as substantially accurate representation—as a substantially accurate replica of a sketch that you made at or about the time which you have testified to at Los Alamos in [fol. 666] connection with your experimentation?

A. I do.

Q. Is that a reasonably accurate portrayal of a sketch of a type of lens, mold or lens that you required in the course of your experimental work at the time?

A. It is.

Q. Would you recognize it as a reasonably accurate replica of the one you submitted to the Theta machine shop?

A. Yes.

Q. For processing?

A. Yes.

Q. In the manner in which you have testified?

A. I do.

Q. I show you Government's Exhibit 6, as to which you have heard Mr. Greenglass testify, and I ask you whether your answers are the same in respect to that exhibit after you have examined it?

A. They are.

Q. Do you recall that in the course of your experimentation at or about that time in 1945 you obtained from the Theta shop molds of the design indicated by those exhibits?

Mr. E. H. Bloch: Now if the Court please, I am going to ask that——

The Court: I can't hear you.

Mr. E. H. Bloch: I am going to ask that this be made [fol. 667] specific. I think Mr. Saypol referred to the year 1945. I want to draw your attention to what Mr. Greenglass testified as to his position from the time he came to Los Alamos to work to the time he left.

Mr. Saypol: Will you suffer an interruption?

Q. Do you recognize those as depictions——

The Court: I can't hear you, Mr. Saypol.

Mr. Saypol: I am sorry.

Q. Do you recognize those exhibits, that is, 2 and 6, as accurate replicas of sketches submitted by you in 1944 and 1945 to the Theta shop as the result of which molds, lens molds were supplied to you for your experimentation?

Mr. E. H. Bloch: Now, if the Court please, I have no objection to the substance of this question, but I ask that the time be more definitely fixed.

By the Court:

Q. If you can remember the approximate month. If you can remember the day, so much the better. If you can remember the approximate months of those years, when those respective sketches were submitted to the Theta shop, let us have it.

A. I cannot.

The Court: Very well.

[fol. 668] Mr. E. H. Bloch: Then I object to the question as too general.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

By the Court:

Q. You do remember that they were some time during the years 1944 and 1945?

A. They were.

By Mr. Saypol:

Q. Or likely the latter part of 1944 and probably the early or first half of 1945?

Mr. E. H. Bloch: I object to this question of Mr. Saypol's on the ground that it is leading and suggestive.

The Court: You want the time. He is trying to get it for you. When he is trying to get it for you, then you object to it.

Mr. E. H. Bloch: Your Honor tried to get it and was unsuccessful.

The Court: Just a moment. I tried to get it by asking him to give me the month. Now Mr. Saypol is asking him to give that portion of the year, by asking whether it is the latter part or forepart.

Mr. E. H. Bloch: I withdraw my objection.

By the Court:

Q. Do you remember whether it was the latter part of [fol. 669] 1944?

A. It was approximately from the middle of 1944 until about the middle of 1945.

By Mr. Saypol:

Q. You have listened, you said, to the testimony of the defendant Greenglass, in relation to Exhibits 2 and 6. Can you tell us whether his testimony is a reasonably accurate description of the devices portrayed in Exhibits 2 and 6 and the functions they had in connection with your experiments?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: Calling for a conclusion.

The Court: I know, but this man is an expert.

Mr. E. H. Bloch: I want to state the ground of my objection.

The Court: Go ahead.

Mr. E. H. Bloch: I have no objection to this witness testifying to any matters concerning science or within his confidence as a scientist in order to explain to the jury more definitively the lay language of the witness Greenglass.

The Court: Yes.

Mr. E. H. Bloch: But I do object to any question which purports to corroborate in any form of the question asked [fol. 670] the veracity or truthfulness of the testimony of the witness Greenglass.

The Court: Your objection is overruled. He is not asking him to tell the Court and jury whether or not Greenglass was telling the truth or not. He is merely asking him with respect to a scientific subject, on which this witness is eminently qualified to testify concerning it.

Mr. Bloch: I am sure that there would be no dispute about that.

The Court: I am not finished.

Mr. E. H. Bloch: I beg your pardon.

The Court: And I have forgotten what I was going to say. You constantly interrupt me before I am through, Mr. Bloch. I tried not to interrupt you.

Well, I will overrule the objection.

Mr. E. H. Bloch: May I have the question read?

(record read.)

Mr. Saypol: Will you Honor allow me to make an observation on the record in connection with the colloquy just preceding? Dr. Koski, as your Honor has suggested, is an expert in the field. I have produced him additionally as the man who has knowledge—the jury may weigh his testimony——

The Court: I know very well.

[fol. 671] Mr. Saypol: (Continuing.) Of the experiments.

The Court: I know very well, but as to this particular question, however, he was testifying as an expert.

Mr. Saypol: Very well.

By Mr. Saypol:

Q. Now, in respect to Government's Exhibit 7, will you examine that, please, Dr. Koski? Having examined it, having heard Greenglass's testimony as to what it depicts, will you tell us whether it is familiar to you?

A. It is.

Q. What does it portray to you?

A. It is essentially—it is a sketch, a rough sketch of our experimental set-up for studying cylindrical implosion.

Q. Did you hear Mr. Greenglass testify as to the description, written description of that experiment that he delivered to one Harry Gold in June, 1945?

A. I did.

Q. Is Government's Exhibit 7 and the details of the information as testified to by Mr. Greenglass that he said he imparted to Gold in June, 1945 a reasonably accurate—are they reasonably accurate descriptions of the experiments and their details as you knew them at the time?

Mr. A. Bloch: Objected to upon the ground that it is [fol. 672] an attempt to characterize the testimony of another witness; not calling for fact.

(Question read.)

The Court: I will strike from that question, "as testified to by Mr. Greenglass".

Now do you understand the question?

The Witness: I do.

The Court: Can you answer it?

The Witness: They are.

Q. That is the experiment that you yourself were conducting in conjunction with the development of the atomic bomb?

A. They are.

Q. In your special field as you knew it at the time, 1944 and 1945, did you have knowledge that the experiments which you were conducting and the effects as they were observed by you could have been of advantage to a foreign nation?

Mr. E. H. Bloch: Objected to upon the ground that this witness has not been qualified as a political expert; merely as a scientific expert. I object to the question as calling for a conclusion.

The Court: I will overrule it.

Mr. E. H. Bloch: I respectfully except.

A. I wonder if you would repeat the question.

(Last question read.)

[fol. 673] A. I did.

Q. And would that knowledge have been of advantage to a foreign nation?

Mr. E. H. Bloch: The same objection, your Honor.

The Court: Overruled.

Q. This question follows my previous question and your answer; In that field in which you were engaged, do you know whether anywhere else there had been similar prior experimentation?

Mr. E. H. Bloch: Same objection, your Honor.

The Court: Overruled.

Mr. E. H. Bloch: Exception.

A. To the best of my knowledge and all of my colleagues who were involved in this field, there was no information in text books or technical journals on this particular subject.

Q. In other words, you were engaged in a new and *and* original field?

A. Correct.

Q. And up to that point and continuing right up until this trial has the information relating to the lens mold and the lens and the experimentation to which you have testified continued to be secret information?

A. It still is.

Q. Except as divulged at this trial?

A. Correct.

[fol. 674] The Court: As far as you know, only for the purposes of this trial?

The Witness: Correct.

Mr. Saypol: Will your Honor allow a statement for the record in that respect? The Atomic Energy Committee has declassified this information under the Atomic Energy Act and has made the ruling as authorized by Congress that subsequent to the trial it is to be reclassified.

The Court: Counsel doesn't take issue with that statement.

Mr. E. H. Bloch: No, not at all. I read about it in the newspapers before Mr. Saypol stated it.

Mr. Saypol: May I have just a moment, if the Court please?

(Mr. Saypol confers with associates.)

Mr. Saypol: You may examine.

Mr. E. H. Bloch: Will you bear with me for three or four moments, your Honor, since I am not a scientist, I don't want to query about matters which might appear asinine.

Cross-examination.

By Mr. E. H. Bloch:

Q. Dr. Koski, did you turn over any of the sketches requested in Government's Exhibits 2, 6 and 7 to the defendant Greenglass?

A. I did not.

[fol. 675] By the Court:

Q. Was the defendant Greenglass in a position where by reason of his employment in the Theta shop he could see the sketches which you turned over?

A. He was.

By Mr. Bloch:

Q. Mr. Greenglass was a plain, ordinary machinist, was he not?

Mr. Saypol: I object to characterizations.
The Court: I will permit the characterization.

A. Correct.
Q. Now, you heard Mr. Greenglass testify about the E shop, did you not?
A. Yes.
Q. Then I believe he testified that there were two other shops similar to the E shop in that technical area and finally there came a time when there was a new building which was called the Theta building and all the shops moved in there, is that correct?
A. That is not correct.

Mr. Saypol: Well,——
The Court: Well, what is not correct?
The Witness: The Theta shop was a separate shop. All of the shops didn't move into this building.
Mr. Saypol: I want to know what is incorrect.

By the Court:

Q. You are not characterizing that Greenglass had testified to that and therefore was incorrect?
A. No.
[fol. 676] Q. You are characterizing that the statement of counsel as formulated in his question is incorrect.

Mr. E. H. Bloch: Well let us clarify it for everybody's sake then.

By Mr. E. H. Bloch:

Q. Was there an E shop?
A. There was.
Q. And did that E shop at some time move into another building?
A. It did.
Q. What was that other or new building called?
A. That was the location of the Theta shop.

Q. Now, was the Theta shop in existence and used for work at the project while the E shop was being used for work?

A. There might have been some overlapping but I am not sure.

Q. Now, were there other shops besides the E shop—I believe he characterized them as the E. C. shops; you correct me if I am wrong—that also moved into the new building, or the Theta shop at the time that you started to use the Theta shop, is that correct?

A. No. The Theta, E and C shop never were in the same building.

Q. Now, when the personnel of the E shop moved into the Theta building were the same number of machinists used for the work which you supervised?

A. I do no- recall the details about the machinists. I usually contacted their superiors.

[fol. 677] Q. In fact, you very seldom had any conversations with any machinists, is that right?

A. Rarely, but not completely—on occasions we did have.

Q. It was very rare?

A. It was rare.

Q. Now, did you know when the defendant Greenglass became an assistant foreman?

A. I did not.

Q. Did you know when he became a foreman?

A. I did not.

Q. Now, just two more questions, Doctor. Do these exhibits——

The Court: What are the numbers?

Mr. E. H. Bloch: I am going to mention them.

Q. (Continuing)—2, 6 and 7, purport to be a complete picture of these lenses in the scientific sense?

The Court: Do you understand, Doctor, what he means by a complete picture?

The Witness: I am not clear as to what you mean.

Mr. E. H. Bloch: Well, maybe I am a little too vague.

Mr. Saypol: To preserve accuracy, I think the testimony

that 2 and 6 are sketches of molds, and 7 is a description of an experiment.

The Court: That is right.

Mr. Saypol: Am I correct?

Mr. E. H. Bloch: That is correct.

The Witness: That is correct.

[fol. 678] Mr. Saypol: So counsel's question to the extent that it refers to 7 should be corrected.

Q. Well, let us satisfy everybody. I will tell you what I am driving at, Dr. Koski: is it not a fact that a scientist would not consider Government's Exhibits 2, 6 and 7, whether or not two of them relate to a lens and one of them relates to some kind of cylindrical apparatus, until the scientists knew the dimensions of the lens or the cylindrical apparatus?

A. This is a rough sketch and, of course, is not quantitative but it does illustrate the important principle involved.

Q. It does omit, however, the dimensions?

A. It does omit dimensions.

Q. It omits, for instance, the diameter, does it not?

A. Correct.

Q. Now is it not a fact that——

The Court: You say it does, however, set forth the important principle involved, is that correct?

The Witness: Correct.

The Court: Can you tell us what that principle is?

The Witness: The principle is the use of a combination of high explosives of appropriate shape to produce a symmetrical converging detonation wave.

Q. Now, weren't the dimensions of these lens molds very [fol. 679] vital or at least very important with respect to their utility in terms of success in your experiments?

A. The physical over-all dimensions that you mention are not important. It is the relative dimensions that are.

Q. Now the relative dimensions are not disclosed, are they, by these exhibits?

A. They are not.

Mr. E. H. Bloch: That is all.

Redirect examination.

By Mr. Saypol:

Q. The important factor from the experimental point of view is the design, is it not?

A. Correct.

Q. That was original, novel at the time, was it not?

A. It was.

Q. Can you tell us, Doctor, whether a scientific expert in the field you were engaged in could glean enough information from the exhibits in evidence so as to learn the nature and the object of the experiment that was involved in the sketches in evidence?

A. From these sketches and from Mr. Greenglass's descriptions, this gives one sufficient information, one who is familiar with the field, to indicate what the principle and the idea is here.

Q. And would I be exaggerating if I were to say, colloquially, that one expert, interested in finding out what was going on at Los Alamos, could get enough from those [fol. 680] exhibits in evidence which you have before you to constitute a tip-off as to what was going on at Los Alamos?

Mr. E. H. Bloch: I object to the form of the question, calling for the operation of somebody else's mind.

Mr. Saypol: I am talking about an expert, if the Court please.

The Court: Yes. What are you objecting to? The use of the words "tip-off"?

Mr. E. H. Bloch: No.

The Court: You are not objecting to the use of those words?

Mr. E. H. Bloch: I am objecting to that amongst other things, but my objection goes to the very substance of the question.

The Court: And in addition you object to the words "tip-off"?

Mr. E. H. Bloch: Yes.

The Court: I will overrule the objection but we will change "tip-off" to "indication."

Mr. Saypol: May we substitute "reveal"? Reveal what was going on at Los Alamos.

(Last question read as follows:)

"Q. And would I be exaggerating if I were to say colloquially that one expert, interested in finding out what [fol. 681] was going on at Los Alamos, could get enough from those exhibits in evidence which you have before you to reveal what was going on at Los Alamos?

A. One could.

Mr. E. H. Bloch: Of course my objection still goes.

Q. Rather than using the preliminary——

Mr. E. H. Bloch: I am sorry.

Mr. Saypol: Let me finish the question.

Mr. E. H. Bloch: I want to preserve the record. Go ahead.

Q. Rather than using my former question, as to suggesting that it would be an exaggeration, is it not a fact that one expert could ascertain at that time if shown Exhibits 2, 6 and 7, the nature and the object of the activity that was under way at Los Alamos in relation to the production of an atomic bomb?

A. He could.

Mr. Saypol: That is all.

Mr. E. H. Bloch: Will your Honor bear with me just a moment? No further questions.

Mr. Saypol: May I address one further question? It is a technical and it has been suggested to me.

By Mr. Saypol:

Q. There was a question put to you by counsel regard- [fol. 682] ing the fact that the exhibits do not show the dimensions. Then there was some statement as to relative dimensions. Distinguishing between relative dimensions and design, it is not the fact that design of the component was the primary fact of importance in these sketches?

A. It was.

Q. So that the sketches, particularly 2 and 6, do show relative dimensions in that they show the relations of each of the factors in the lens, one to the other?

A. They do.

Mr. Saypol: That is all.

Recross-examination.

By Mr. E. H. Bloch:

Q. Well, Doctor, when you gave instructions to, I believe you said it was Sergeant Fitzpatrick—was that the name?

A. Yes.

Q. And the other gentlemen?

A. Marshman.

Q. Did you detail with any specificness the measurements of the lens or of the component parts of the lens that you wanted constructed?

A. I gave specific instructions. I gave rough sketches, and then while this lens mold was in progress we had to send down one of our men to sketch out, to precisely draw the shape of this lens on the metal from which it was being cut.

Q. When you say precisely draw, are you saying now that precision work was necessary in the construction of this mold lens?

[fol. 683] A. The shape of this lens is an important factor.

Q. So aside from the shape—I am trying to direct your mind, Doctor, to the precision, quality of the work that was entailed and necessary in the construction of the lens.

A. It had to be a precision job.

Mr. R. H. Bloch: That is all.

By the Court:

Q. While there might have been some other details that might also have been of some use to a foreign nation which were not contained on Exhibits 2, 6 and 7, the substance of your testimony, as I understand it, was that there was sufficient on Exhibits, 2, 6 and 7 to reveal to an expert *which* was going on at Los Alamos?

A. Yes, your Honor.

Mr. Saypol: That is all.

Mr. E. H. Bloch: That is all.

The Court: It is about twelve minutes of one now. In view of the fact that I turned over Court's Exhibits 1 to 5, we will take a rather extended luncheon recess. So you may now have an hour and forty-five minutes to examine them, and we will return here at two-thirty, ladies and gentlemen.

(Recess until 2:30 p. m.)

[fol. 684] AFTERNOON SESSION

COLLOQUY BETWEEN COURT AND COUNSEL

(Jury not present.)

Mr. E. H. Bloch: May we approach the bench?

(The following discussion took place at the bench, outside of the hearing of the jury;)

Mr. E. H. Bloch: If the Court please, with respect to the documents in the grand jury minutes which have been offered for identification, the defendant Julius Rosenberg and the defendant Ethel Rosenberg are satisfied to let the record stand as it is.

The Court: Very well.

Mr. Phillips: As for the defendant Sobell, frankly, I am not quite convinced that I would be doing my duty by answering one way or the other. My mind is open. I have tried to weigh it, and I am very conscientiously concerned with respect to making a decision at this time. I should like the indulgence of the Court to think it over between tonight and tomorrow.

The Court: I am going to ask you to make your decision now. You have had one hour and 45 minutes.

Mr. Phillips: Do you know how much reading matter there is?

The Court: I read it myself, Mr. Phillips.

[fol. 685] Mr. Phillips: Did you read all the statements in an hour and a half?

The Court: I read every word of it and I read it in about 35 minutes, having in mind the testimony while I was reading it.

Mr. Kuntz: The point is, it took us all the time; we had a sandwich brought in.

Mr. Phillips: We were sitting here all the time.

Mr. Kuntz: May I say this: We had finished shortly before recess was about to end. Mr. Phillips and I were in the middle of discussing this question. I will tell you that very frankly.

The Court: Do you want another five minutes?

Mr. Phillips: We are in disagreement at this moment.

Mr. Kuntz: I personally feel, as far as our client is concerned, I am satisfied with the record as it stands. We are in the midst of discussing it. I don't know how long it will take me to convince Mr. Phillips. I am telling you that very frankly there is disagreement between us.

Mr. Phillips: Let it be understood that I am not dissatisfied with the record as it stands, but I am at present of the opinion that using the statement of June the 20th——

[fol. 686] Mr. Kuntz: July 20th.

Mr. Phillips: Of July 20th and July 21st, only, these two records, as a basis of a few questions to the witness Elitcher, that might clarify certain elements of the situation in favor of Sobell.

The Court: It might clarify it also in favor of the government.

Mr. Phillips: Please.

The Court: That was the feeling I had when I read it.

Mr. Phillips: If I did not have such feeling—

Mr. Saypol: That is why I think I had the right to use it.

Mr. Phillips: I will make up my mind, but that is one thing that is a problem.

The Court: Off the record.

(Further discussion off the record.)

Mr. Kuntz: I think the record is favorable.

Mr. Phillips: For the next 30 years I will worry about it.

The Court: Then, as I understand it, gentlemen, every-

body is now in agreement that there is going to be no further use made of Court's Exhibits 1 to 5 and the witness Elitcher is excused; is that correct?

Mr. E. H. Bloch: Yes.

[fol. 687] Mr. Phillips: By the way, I don't like the word "agreed"; we are not all agreed.

The Court: You are waiving your right.

Mr. Phillips: My request is still for time to actually make up my mind.

The Court: All right, at this particular point now you desire no further examination of Mr. Elitcher. You have examined Court's Exhibits 1 to 5 and you have heard what Mr. Bloch said; you have heard what you associate said, and as far as you are concerned you don't want Mr. Elitcher to take the stand.

Mr. Phillips: As far as I am concerned, I am not prepared *not* to examine Mr. Elitcher and I make request of the Court to give me time until tomorrow morning to make up my mind as to what is in the best interests of justice to my client.

The Court: I have given you one hour and 45 minutes now to do. I personally read all of that matter in 35 minutes.

Mr. Phillips: Maybe I am not as quick-witted as the Court.

The Court: You are very quick-witted.

Mr. Saypol: When your Honor refers to Mr. Phillips' associate, you mean Mr. Kuntz.

The Court: I mean Mr. Kuntz, yes.

[fol. 688] Mr. Phillips: Mr. Kuntz and I are at variance at this point.

The Court: Very well then, we will proceed with the next witness.

The Court: Send for the jury.

(The jury returned to the courtroom at 2:40 p. m.)

The Court: Do you want the witness Greenglass?

Mr. Saypol: Yes, we have sent for him.

Mr. Cohn: Yes.

DAVID GREENGLASS, resumed the stand.

Direct examination continued.

By Mr. Cohn:

Q. Mr. Greenglass, one thing I forgot to ask you about this morning in connection with the meeting up at Rosenberg's apartment, when you and your wife went there for dinner after Ann Sidorovich had left the apartment. Did you have a conversation with Mr. and Mrs. Rosenberg?

A. Yes, I did.

Q. Will you tell us what they said to you at that point?

A. At that point——

Mr. E. H. Bloch: If the Court please, I submit the question has already been asked and already been answered. I have no objection if Mr. Cohn wants to direct the witness to some specific item which you feel——

Mr. Cohn: That is precisely what I am doing.

[fol. 689] The Court: All right.

A. Well——

Mr. E. H. Bloch: Let us not have a rehash of the testimony.

A. Well, at this point Mr. and Mrs. Rosenberg told me they were very happy to have me come in with them on this espionage work and that now that I was in it there would be no worry about any money they gave to me, it was not a loan, it was money given to me because I was in this work and that it was not a loan.

Q. Did they say anything about the source of that money?

A. They said that it came from the Russians who wanted me to have it.

Q. Now you have told us about the visit of Harry Gold to you in June about the material that you turned over to him. When after that was the next occasion when you saw Julius Rosenberg?

A. It was on my furlough in September, 1945.

Q. Where—you got a furlough in September of 1945?

A. That is right.

Q. Where did you go on that furlough?

A. I went home but I no longer had the apartment at 266 Stanton Street, so we stayed in an apartment where I had been living before I was married, which was in the building that my mother lives in, 64 Sheriff Street.

[fol. 690] Q. In other words, you came from New Mexico to New York for the furlough?

A. That is right.

Q. Did you wife come with you?

A. She did.

Q. Now how long after you arrived in New York——

The Court: Which furlough is this?

Mr. Cohn: September 1945, your Honor. The other one was January, 1945.

The Court: That is right.

Q. You had not been in New York from January, 1945 until September 1945, is that right?

A. I had not, no.

Q. And this meeting with Harry Gold took place out at New Mexico?

A. That is right.

Q. Now, in September 1945, after you returned to New York, when was it that you first saw Julius Rosenberg?

A. It was the morning after I came to New York.

Q. Now, would you tell us what happened? Where did you see him?

A. He came up to the apartment and he got me out of bed and we went into another room so my wife could dress.

Q. Did you have a conversation in that other room?

A. I believe we did.

Q. What did he say to you?

A. He said to me that he wanted to know what I had for him.

Q. Did you tell him what you had for him?

A. Yes. I told him "I think I have a pretty good"—

[fol. 691] "a pretty good description of the atom bomb".

Q. The atom bomb itself?

A. That's right.

Q. Now at this point, Mr. Greenglass, I want to take

you back to your testimony on Friday afternoon. Did I understand you to say—well, I will be a little more specific. I am going to take you back to meeting in January 1945 when you had a conversation with Rosenberg at your apartment. Did I understand your testimony to be that Rosenberg had given you a description of the atom bomb?

A. He did.

Q. He gave you a description of the atom bomb?

A. That is right.

Q. Will you tell us the conversation you had with him at the time when he gave you this description of the atom bomb?

A. Well, he said to me he would have to give me an idea of what the bomb was about so that I would be able to know what I am looking for. He then gave me a description of what I later found out to be was the bomb that was dropped at Hiroshima.

Mr. E. H. Bloch: Now if the Court please, I do not like to interrupt the witness. I move that everything after what he subsequently found out——

The Court: Yes, Mr. Bloch.

Mr. E. H. Bloch: —be deleted from the answer.

The Court: Strike it out.

[fol. 692] Mr. E. H. Bloch: And I also request at this time, in connection with this very specific inquiry that the witness be cautioned against using the word "description" but let us have specifically what the description was.

Mr. Cohn: I intend to come to that directly, your Honor. I can't do everything at one time.

Mr. E. H. Bloch: I am sorry, I did not mean it by way of criticism.

Mr. Cohn: I am sure of that, Mr. Bloch.

Your Honor, I object to striking the remainder of that answer. I think it is important and I don't see why the witness is not able to give us knowledge that he gained in the course of his official duties at Los Alamos.

The Court: You haven't brought out what he subsequently learned, and I don't know from whom.

Q. All right, tell us under what circumstances you subsequently learned that this bomb was the type atom bomb dropped on Hiroshima?

Mr. E. H. Bloch: I object to that as not binding on the defendant.

The Court: Now of course, I take it you are bringing into force his knowledge of a particular project and from what he learned there so that he could apply what was told by Rosenberg to him to the knowledge that he learned [fol. 693] and concluded that that was the bomb on Hiroshima.

Mr. Cohn: Yes, your Honor.

The Court: Very well, I will overrule that.

Mr. E. H. Bloch: Except this, your Honor, I submit that for the purpose of clarity that we are dealing here with a conversation which allegedly took place between this witness and Julius Rosenberg in New York in January, 1945.

The Court: That is correct.

Mr. E. H. Bloch: And I believe that Mr. Cohn was inquiring of the witness what that conversation was.

The Court: That is correct.

Mr. E. H. Bloch: Now I submit that we ought to have that conversation, and if Mr. Cohn specifically wants to point out that this witness may have acquired information later, I can see that but not—what we are trying to do is to anticipate in this conversation, what this witness may have found out years later.

The Court: It is perfectly all right; I see no objection to that.

Mr. Cohn: Of course, your Houor, if Mr. Bloch would let it go on for a while he will see a very clear picture. Sometimes he makes these objections, when if he did not his problem would be made clear to him in two or three [fol. 694] further questions.

Mr. E. H. Bloch: Well, thanks for the suggestion.

Mr. Cohn: All right. That will be a standing suggestion, and if I don't live up to that, Mr. Bloch, of course on cross-examination can inquire fully into any matters which he feels have not been brought clearly out.

Now, could we have my last question read?

(Question read.)

Mr. E. H. Bloch: That is objected to, your Honor, and I assume you have overruled my objection and I take an exception.

A. Well, in the course of my work at——

Mr. E. H. Bloch: Wait. Now I object. I object to the words in the question about the bomb that was subsequently dropped on Hiroshima.

The Court: I overruled your objection. That is what you objected to before.

Mr. E. H. Bloch: Well, I did not think that the word "Hiroshima" was used in the previous question. Maybe I am wrong.

The Court: It was.

Mr. E. H. Bloch: At any rate, my objection stands.

Q. You say in the course of your work?

A. In the course of my work at Los Alamos I came in contact with various people who worked in different parts of the project and also I worked directly on certain ap- [fol. 695] paratus that went into the bomb, and I met people who talked of the bombs and how they operated.

Q. And on the basis of that knowledge and information?

A. I gave the sketches and these reports.

Q. Right; and was it on the basis of that same knowledge and information that you learned that this bomb which Rosenberg had described to you was the type of atom bomb that was dropped on Hiroshima?

A. That is right. They——

Q. All right. Could you tell us, as you remember, in exactly what words Rosenberg described this type atom bomb to you?

A. He said there was fissionable material at one end of a cube and at the other end of the cube there was a sliding member that was also of fissionable material and when they brought these two together under great pressure, that would be—a nuclear reaction would take place. That is the type of bomb that he described.

Q. Was that the first time you had ever heard a description of that type atom bomb?

A. That is right.

Q. Or of any type atom bomb, is that right?

A. That is right.

Q. Now did Rosenberg tell you at that time why he was describing this type atom bomb to you?

A. He was describing it to me so that I should know [fol. 696] what to look for, what I could——

The Court: He told you that?

The Witness: That is right.

Q. After he gave you that description, the Hiroshima type, did you, in ensuing months, gather information concerning the atom bomb?

A. I did.

Q. Will you tell us just how you went about that?

A. I would usually have access to other points in the project and also I was friendly with a number of people in various parts of the project and whenever a conversation would take place on something I didn't know about I would listen very avidly and question——

Mr. E. H. Bloch: I move to strike out the word "avidly".

The Court: Overruled.

Mr. E. H. Bloch: Exception.

Mr. Cohn: May we have the last few words?

(Record read.)

A. (Continuing:) And question the speakers as to clarify what they had said. I would do this surreptitiously so that they wouldn't——

Mr. E. H. Bloch: I move to strike that out.

The Court: You would do it, I take it, so that they wouldn't know it.

The Witness: I would do it so they wouldn't know.

[fol. 697] The Court: Strike out "surreptitiously". Go ahead.

Q. Now, in addition to that fact, you yourself were working on various things used in connection with the experimentation used on the atom bomb?

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. Such as this high explosive lens?

A. High explosive lens molds were made in my shop and I got—as a matter of fact, there were molds used on the atom bomb.

Q. Was it on the basis of this knowledge which you had accumulated over those months that you told Rosenberg you thought you had a pretty good description of the atom bomb itself?

A. I did.

Q. Did you at a later time, give to Rosenberg a description of the atom bomb itself?

A. I did.

Q. Now, was this atom bomb which you described to him, the same type atom bomb he had described to you in January?

A. It was not.

Q. Would you explain that to us?

[fol. 698] A. One type of bomb, the one that he described to me, was dropped at Hiroshima, and it was the only type bomb of that nature that was made. The one I got most of my knowledge on, got the knowledge—the information on, was of a different nature. It was a type that worked on an implosion effect.

Q. It was a different type atomic bomb?

A. That is right.

Mr. E. H. Bloch: If the Court please, I move to strike out the answer upon the ground that this witness has not been qualified as an expert.

The Court: Overruled.

Mr. E. H. Bloch: I except.

Q. Was this type atom bomb a type which was manufactured at Los Alamos, to your knowledge, after the Hiroshima bomb was no longer in process of manufacture?

A. That is right.

Q. Did you give Rosenberg the description at that time?

A. No. It was later in the afternoon.

Q. All right. Now, I believe we are at the point where Rosenberg—you told Rosenberg you had a pretty good description of the atom bomb. What did he say to you at that point?

A. He said he would like to have it immediately, as soon as I possibly could get it written up he would like to get it.

[fol. 699] Q. He wanted it written up?

A. Yes.

Q. Now, would you tell us what you did?

A. Oh, besides that, during this conversation, he gave me $200. and he told me to come over to his house. I then went to see my—well, he then left and I was there alone with my wife.

Q. Did you have any discussion with your wife?

A. My wife didn't want to give the rest of the information to Julius, but I overruled her on that. I told her that——

Mr. E. H. Bloch: I object to this, not only because it was not in the presence of the Rosenbergs, but because the witness is stating conclusions.

Q. Tell us what you said to her.

A. I have said that "I have gone this far and I will do the rest of it, too".

Q. How about the money, what did you do with the $200.?

A. I gave that to my wife.

Q. What happened after this conversation between you and your wife?

A. We went down and had——

By the Court:

Q. Before you get to that point, when did you turn over Exhibits 2 and 6?

Mr. Cohn: 2 and 6, your Honor, are the first two exhibits on the high explosive lens.

[fol. 700] The Court: They are replicas of it. When were they turned over?

By Mr. Cohn:

Q. When did you give the first sketch, the first lens mold sketch?

A. That was in January, 1945.

The Court: What about the second one, 6?

Mr. Cohn: Do we have the exhibit here?

Q. This is Exhibit 2. His Honor's question was, when did you turn that over?

A. That was in January, 1945.

Q. To whom did you give it?

A. I gave that to Julius Rosenberg.

Q. Now, Exhibit 6?

A. I gave that to Harry Gold.

Q. In June of 1945 at Alburquerque?

A. In June, 1945, at Alburquerque.

Mr. Cohn: Does that clarify it, your Honor?

The Court: How about 7?

Q. Exhibit 7. Am I correct in stating you gave Exhibit 7 to Gold at the same time you gave him Exhibit 6?

A. I gave that too, that is right.

The Court: Very well.

Q. Now tell us what you did after you had this discussion with your wife.

A. Well, we went down—it was late in the morning—we had a combination breakfast and lunch, and I came back up again and I wrote out all the information and [fol. 701] drew up some sketches and descriptive material.

Q. Did you draw up a sketch of the atom bomb itself?

A. I did.

Q. Did you prepare descriptive material to explain the sketch of the atom bomb?

A. I did.

Q. Was there any other material that you wrote up on that occasion?

A. I gave some scientists' names, and I also gave some possible recruits for espionage.

Q. Now, about how many pages would you say it took to write down all of these matters?

A. I would say about 12 pages or so.

Q. About what time did you complete preparing this report?

A. It must have been about 2 in the afternoon.

Q. Now, tell us what you did after you prepared these 12 pages of written material, including the sketch of the atom bomb and a description of the sketch.

A. My wife and myself got into my father-in-law's car and we drove around to Julius's house. We went up to the house and I gave Julius the information which——

Q. Gave him all of this written information?

A. That is right.

Q. Including this sketch?

A. That is right.

Mr. Cohn: May we have this marked for identification, [fol. 702] your Honor?

(Marked Government's Exhibit 8 for identification.)

Q. Have you prepared for us, Mr. Greenglass, a replica of the sketch—I believe it is a cross-section sketch of the atom bomb—a replica of the sketch you gave to Rosenberg on that day?

A. I did.

Q. I show you Government's Exhibit 8 for identification, Mr. Greenglass, and ask you to examine it and tell us whether or not that is a replica of the sketch, cross-section of the atomic bomb?

A. It is.

Q. And how does that compare to the sketch you gave to Rosenberg in September, 1945?

A. About the same thing. Maybe a little difference in size; that is all.

Q. Except for the size?

A. Yes.

Q. It is the same?

A. Yes.

Q. By the way, who was present when you handed the written material including this sketch over to Rosenberg?

A. My wife, my sister, Julius and myself.

Q. By your sister, you mean Mrs. Rosenberg?

A. That is right.

Mr. Cohn: We offer this in evidence, your Honor.

[fol. 703] Mr. E. H. Bloch: I object to it on the same ground urged with respect to Government's Exhibits 2, 6 and 7, and I now ask the Court to impound this exhibit so that it remains secret to the Court, the jury and counsel.

Mr. Saypol: That is a rather strange request coming from the defendants.

Mr. E. H. Bloch: Not a strange request coming from me at the present.

Mr. Saypol: We have discussed that with the Court, as counsel knows, and I think nothing else need be said. If I had said it or my colleague, Mr. Cohn had said it, there might have been some criticism.

The Court: As a matter of fact, there might have been some question on appeal. I welcome the suggestion coming from the defense because it removes the question completely.

Mr. Saypol: And I am happy to say that we join him.

The Court: All right. It shall be impounded. Let me see it. Do you have any objection to the descriptive words on the bottom wherein it is stated, cross-section A bomb, not to scale?

Mr. E. H. Bloch: I haven't seen the exhibit itself, your Honor.

[fol. 704] The Court: Show it to counsel.

(Handed to Mr. E. H. Bloch.)

Mr. E. H. Bloch: No, I have no objection to that.

Mr. Cohn: May the exhibit be received in evidence, your Honor?

The Court: Yes.

(Government's Exhibit 8 for identification received in evidence.)

The Court: It will be sealed after it is shown to the jury.

Mr. Cohn: Yes, your Honor. I would like to interrogate the witness on the basis of it for a moment. Mr. Saypol calls my attention to the fact that all defense counsel have

not joined in this request that this document be impounded. I wonder if the defendant Sobell's counsel care to join?

The Court: I thought it was understood that where one counsel spoke and the other one didn't object to what he said, by his silence he acquiesced in what the other counsel was saying.

Mr. Kuntz: I thought your Honor made that a rule throughout this trial.

By Mr. Cohn:

Q. Now, Mr. Greenglass, address yourself to that sketch [fol. 705] and tell us, if you will, just what you wrote as best you remember of the descriptive material you gave to Rosenberg in September, 1945, the descriptive material in that sketch.

A. Well, I had this sketch marked A, B, C, D, E, F, and those referred to various parts of the bomb.

Q. Now tell us exactly what you wrote in this descriptive material.

Colloquy Between Court and Counsel

Mr. E. H. Bloch: Before you answer the question, may we come up to the bench, your Honor?

(The following took place at the bench, out of the hearing of the jury.)

Mr. E. H. Bloch: Let me say by way of explanation, Mr. Saypol, that despite the fact that the Atomic Energy Commission may have declassified this, I was not at all sure in my own mind, and I am talking privately, whether or not even at this late date, this information may not be used to the advantage of a foreign power. Remember, I am talking personally. And since you said something which might be an implied criticism of me, and said that in front of the jury, and I certainly don't take umbrage at your criticism, I want to say to the Court as far as this descriptive material is concerned, I am perfectly satisfied that this also be kept secret.

[fol. 706] The Court: Do you want it to be done in camera without the spectators being present?

Mr. Saypol: In fact, if Mr. Bloch will state that that is his request, to be recognized for what it is, we obviously have been proceeding on the assumption——

The Court: That is correct.

Mr. Saypol: That under the law we are required to apprise the defendant of the nature of the case.

Mr. E. H. Bloch: Absolutely.

Mr. Saypol: If Mr. Bloch will state in the presence of the jury that he requests it that way.

The Court: Requests what?

Mr. Saypol: Requests the courtroom to be cleared.

The Court: He doesn't have to request it. I can state it. As long as we have right here Mr. Bloch's statement that he has no objection to clearing the courtroom.

Mr. E. H. Bloch: That is correct.

Mr. Saypol: Well, let us put it this way: I had assumed —I was on the horns of a dilemma. We thought this out very carefully in preparation, the four of us, together with the representatives of the Atomic Energy Commission, Mr. Lane, in my behalf, was—with representatives of the Department of Justice took this up first with the [fol. 707] entire Commission on February 8th and then with the entire representation of the Joint Congressional Committee on Atomic Energy, and the ultimate resolution was that it was left in my discretion as to how much of this material should be disclosed, on the premise that the primary obligation in the administration of justice was that the defendants were entitled to be apprised of the nature of the case against them. I proceeded as I did.

The Court: Correct. Let me ask you this. Perhaps we can even avoid this matter of clearing the courtroom if counsel stipulate right now that the matters that were described, as he is about to describe, were of a secret and confidential nature.

Mr. Saypol: May we do it this way.

The Court: In regard to the national defense.

Mr. Saypol: May I state it on the record in the form of a request or in the form of a request to the Court? Your Honor may address it to the defense counsel for their concurrence. Is that all right? Mr. Denson?

Mr. Denson: Yes.

The Court: Who is that gentleman?

Mr. Saypol: Mr. Denson, Mr. William Denson, chief of the litigation section of the Atomic Energy Commission. [fol. 708] He is here with representatives of the Commission. He has been in attendance on this phase of the case.

The Court: Gentlemen, how do you feel about that, addressing myself to counsel for the defense?

Mr. E. H. Bloch: May I consult with co-counsel for just a moment?

(Defense counsel confer.)

Mr. E. H. Bloch: If the Court please, after some conversation between counsel, we cannot find concurrence among ourselves and, although I have made my position, or at least I have given my thinking to the Court, I am willing in the interest of harmony of the defense, to yield to the reservations and misgivings of Mr. Phillips and Mr. Kuntz and let the trial proceed, and if the Court desires to keep this type of testimony secret I, for one, would have no objection.

The Court: I won't keep it secret from the jury.

Mr. E. H. Bloch: Not secret from the jury.

Mr. A. Bloch: I might say, personally, that I dissent from the conclusion reached by my three friends. I would like to agree with the original proposition.

The Court: You would like to stipulate it?

[fol. 709] Mr. A. Bloch: I would like to stipulate it as an American citizen and as a person who owes his allegiance to this country. I would like to stipulate it first to save the expense; I understand it would save quite an expense to the Government to bring all these people here.

The Court: May I ask you gentlemen, Mr. Phillips and Mr. Kuntz, why aren't you stipulating this?

Mr. Phillips: For the reason that I do not feel that an attorney for a defendant in a criminal case should make concessions which will serve the People from the necessity of proving things, which in the course of the proof we may be able to refute.

The Court: Particularly as to your client, where do you come in on this phase?

Mr. Phillips: That is just the point. It may not be connected. I don't believe it will be, but I am not sure that they may try to connect it later.

The Court: Are you going to be technical and ask them to give specifically every detail? Is that what you want?

Mr. Phillips: Well, if we are not to be connected, it is [fol. 710] of no consequence whether they give details or not.

Mr. Saypol: On the state of the record, I approach the bench at the request of counsel——

The Court: I didn't say you were not connected.

Mr. Saypol: I approach the bench at the request of counsel for the defense or some of them, or one of them who made an offer. I think I should be free now to state that if counsel are not unanimous in preserving secrecy I am inclined to go forward with my proof. That was the offer that was made by Mr. Bloch in the presence of the jury.

The Court: Let me handle it.

Mr. Kuntz: We have no objection.

Mr. Phillips: We don't raise any objection to Mr. Bloch's suggestion. We don't object to that.

The Court: What are you objecting to?

Mr. Phillips: To making concessions at this time.

The Court: Wait a minute. I am not asking for a concession. Are you willing to stipulate that this matter that he is about to testify to, the details, because he will supply it—he has a witness who will say that it concerns national defense and is a secret matter. All they are asking you to do is to stipulate that it is.

[fol. 711] Mr. Phillips: That is the same thing as a concession. I am inclined not to do that, but that doesn't interfere with Mr. Bloch's offer in open court. We don't object to that.

Mr. Kuntz: We don't object to that.

The Court: Wait a minute, you are objecting. You do want the details. You are not willing to agree to them.

Mr. Phillips: Will you please turn back?

The Court: No, I don't want to turn back. Let me hear what Mr. Kuntz says.

Mr. Kuntz: As I understand it, Mr. Bloch's suggestion

was that the public be excluded from hearing any of this testimony.

The Court: That is right, I know that.

Mr. Kuntz: We haven't disagreed with that and we don't disagree with that.

The Court: Well, it is really a matter for you anyway.

Mr. Kuntz: Well, we are not objecting, but as far as a concession, Mr. Phillips feels that way and I don't feel to the contrary; I will say that.

The Court: Well, go ahead.

Mr. E. H. Bloch: I want to clarify my own position here in view of my father's statement. I still adhere to the [fol. 711-A] original offer that I made as implemented by the statement that I have made up here at the bench.

The Court: All right. I will handle it.

Mr. Saypol: I would like to have my position known.

The Court: I will give you a chance to say what you want to say.

[fol. 712] (The following proceedings were resumed in the presence and hearing of the jury.)

The Court: Now, there is a matter of some concern to me personally, that the witness is about to testify to, and the concern I have is as to the method that this testimony should be handled.

Now, Mr. Saypol—Mr. Cohn was about to take detailed proof on certain descriptive matters concerning the atom bomb which the witness contends was turned over to the defendant Julius Rosenberg; that while it might not be in the best interests of the country, was yet a matter that is necessary in the trial of a case and under our democratic form of government.

Mr. Bloch, I understand that you are willing to concede the testimony concerning that particular phase of it, is that correct?

Mr. E. H. Bloch: I was willing to do this, your Honor—I want to restate it very clearly. I thought that in the interest of national security, any testimony that this witness may give of a descriptive nature concerning the last Government exhibit might reveal matters which should not be revealed to the public.

The Court: Therefore?

Mr. E. H. Bloch: And, therefore, I felt that his testimony on this aspect should be revealed solely to the Court, to [fol. 713] the jury and to the counsel and not to the public generally.

The Court: Well, now Mr. Saypol, do you wish to say something?

Mr. Saypol: Yes. I feel free to address myself to the subject in the light of the fact that the situation as it exists, is not of my creation but that of one of counsel for the defendants. The character of the proof has been offered, this witness and the preceding one, has been the subject of very grave consideration by my colleagues, myself, by agencies of the Government, including the Department of Justice, the Atomic Energy Commission and the Joint Congressional Committee on Atomic Energy.

We are cognizant that there had to be balanced on the one hand, the disclosure of the type of information that has come out, and is about to come out, in order to supply the requirements of the Constitutional Rights of defendants to full confrontation. That subject has been expended upon by our courts. That weighed against the national security. That matter is of such gravity that the Atomic Energy Commission held hearings, at which I was represented, as did the Joint Congressional Committee, and representatives of the Atomic Energy Commission have been in attendance here at the trial, as your Honor knows, [fol. 714] have been in constant consultation with me and my staff on the subject.

At least one of the counsel for the defendants, made the offer to preserve the confidential character of this information. I think I stated before that solely for the purposes of this trial, the Atomic Energy Commission had released—had authorized the release of this information so that the Court and the jury might have it. If all counsel for the defendants had joined in Mr. Bloch's suggestion it would have been ideal. In the presence of a conflict amongst the defendants as the prosecutor, my view is that of my colleagues, where I say frankly that the decision is not one that I would freely care to make myself, although I am not unequipped to do so, nor am I hesitant, but it has unanimity amongst us. Since there is no con-

currence among counsel for the defendants, it is my view that we should go forward with the proof as it has proceeded, unless the Court of its own volition, bearing in mind, as I know it will, the Constitutional factors as they relate to the defendants, itself chooses to make an appropriate direction.

The Court: Ladies and gentlemen, in as plain and simple language as I can possibly put it to you, under our form of government, we do not have what has been characterized as "star chamber proceedings", where a defendant is not [fol. 715] permitted to hear the testimony against him or only a portion of testimony is given and certain portions are withheld. When the defendant is put on trial, under our form of government, I am happy to say, he is entitled to full confrontation, and that means confrontation of all the evidence which the Government contends to prove the guilt of the defendant or defendants.

Now, there are some courses open to the Court and I am about to pursue one of these courses reluctantly, but necessarily so. I am going to ask spectators in the courtroom to please leave the courtroom during the course of the taking of these proceedings on the balance of this testimony.

Mr. E. H. Bloch: If the Court please, would this be an appropriate time to take a recess?

The Court: We will take a short recess.

Mr. Fabricant: If the Court please, may I approach the bench? I was about to ask whether I am included or excluded in the instruction you have given?

The Court: You have gone over this with your client, have you?

Mr. Fabricant: I don't know everything that he has said.

The Court: I think perhaps you had better be excluded [fol. 716] on this portion of testimony.

Mr. Fabricant: That is what I wanted to ask.

(Short recess.)

(The following proceedings were had in the absence of the witness, the jury and the general public.)

The Court: Gentlemen, the press sent some representa-

tives in before and they are rather agitated over the fact that I have included them in the barring order.

Now, I would like to have an expression of opinion on that.

Mr. E. H. Bloch: Now, unless Mr. Saypol wants to gather his thoughts—I think he does as I see his expression—I would like to articulate what I think, which is really in confirmation of what I said before, at least in what is implicit in what I said before.

Mr. Saypol: Will you stop for a minute, Mr. Bloch?

Mr. E. H. Bloch: Yes, certainly.

Mr. Saypol: I am sorry to interrupt, but I want the Court to know that present in the courtroom, in addition to my staff, representatives of the FBI——

Mr. Phillips: A little louder please, Mr. Saypol.

Mr. Saypol: I say in addition to my staff and myself are present, in the courtroom, representatives of the Federal [fol. 717] Bureau of Investigation, the Atomic Energy Commission who have been in attendance, Mr. Nicholson of the Department of Justice, and Mr. Sheehy, representing the Joint Congressional Committee, and I take it that it is appropriate in the light of the Court's ruling that they be in attendance.

The Court: I am dealing with another subject, and I am not prepared to discuss that now. I am directing my attention to something else entirely. We are not yet dealing with the testimony. The question now is whether or not the press should be barred. I think Mr. Saypol, perhaps you ought to discuss it with the representatives of the Atomic Energy Commission.

Mr. Saypol: Would your Honor allow me a moment?

The Court: Yes.

Mr. E. H. Bloch: I will hold my remarks in abeyance.

(Conference off the record.)

Mr. Saypol: I would be agreeable to that, depending upon their good judgment, and I might say to the Court that I am informed that Senator O'Connor is outside and I would like to ask leave——

The Court: Mr. Benson, will you ask the press to come back before we bring the jury back.

Mr. Saypol: Senator O'Connor, may he come in?
[fol. 718] The Court: Ask Senator O'Connor to come in, too.

Mr. E. H. Bloch: I may say to the Court that I am in agreement with Mr. Saypol's position.

The Court: You agree with his position.

Mr. E. H. Bloch: You want the press excluded.

Mr. Saypol: No, we want them in.

Mr. E. H. Bloch: Oh, I am sorry, then I withdraw my remarks.

Mr. Saypol: Will you join in that?

Mr. E. H. Bloch: No, I did not understand you. My position is that I think the press ought to be excluded in the prohibition.

The Court: In the prohibition?

Mr. E. H. Bloch: I believe so; otherwise I believe the purpose would be defeated, unless the press is enjoined to secrecy.

The Court: No, they won't be enjoined to secrecy. They will be enjoined to good taste.

(At this point members of the press reentered the courtroom.)

The Court: Mr. Murphy, are there any other members of the press who want to come in?

Mr. Murphy: I can get them in in a moment.

The Court: Will you get them?
[fol. 719] Mr. Murphy: Yes.

(Mr. Murphy leave the courtroom and returns with other members of the press.)

The Court: May I say to the members of the press that I have considered the question of the press being present during the period of the taking of this part of the testimony. My personal feeling in the matter is that all of this testimony that is anticipated has probably fallen into the hands of those from whom we are trying to keep the information. However, I personally can't be certain of that fact and whatever course is followed is not a certain course on the matter. However, there has been a discussion here between Mr. Saypol, and I take it representatives

of the Atomic Energy Commission on the subject of whether the press should be present, and it has been resolved generally that the press should be here. However, we are going to trust to your good taste and your good judgment on the matter of publishing portions of this testimony.

Mr. Saypol: May the record show that the defendants are agreeable to that?

The Court: Are the defendants agreeable to that?

I do not think it has anything to do with the agreement of the defendants or not, Mr. Saypol.

[fol. 720] Mr. E. H. Bloch: That is just what I was going to say, but if the record wants to record my views, may I state that I don't consider this entire question involves a question of law.

The Court: I agree.

Mr. E. H. Bloch: And therefore——

The Court: It does not involve any question as to whether the defense is agreeable or not. It is a decision which I am making and I have a responsibility for that.

Mr. A. Bloch: We have no objection to your Honor's attitude in the matter.

Mr. Kuntz: Could I state so that it is clearly on the record that the defendant Sobell, his counsel, have no objection to the exclusion of the public or anybody else that your Honor desires to exclude or to include.

The Court: Have you had a chance to reconsider the question as to whether or not any of this testimony should be taken and whether or not we can't stipulate on the question that it was secret and confidential matter and pertaining to the national defense?

Mr. Kuntz: Well, Mr. Phillips and I are in complete agreement that we would not be defending the rights of our client properly by stipulating any such thing. We feel that our national defense is secure only in so far as [fol. 721] we secure the liberty of our present client, and tomorrow the next client, and so on, and because of that we feel that a confession of that kind would not be in the best interests of the defense of our client, not because of the nature of the testimony or anything of that kind.

The Court: All right.

Mr. A. Bloch: And I want to state on the record, that so

far as my son and myself are concerned, we would be willing to stipulate.

The Court: I understood that to be your position.

All right, let us have the jury back.

[fol. 722] Mr. Saypol: May I apprise the Court of the fact that there is also present, in the court, a representative of the Department of Justice, a representative of the Joint Congressional Committee on Atomic Energy, a member of the United States Senate. I take it that is agreeable?

The Court: That is agreeable.

Mr. Saypol: Now I am advised that the Senator has left. So that reduces the number present.

(The following took place in the presence of the jury:)

By Mr. Cohn:

Q. Now will you tell us just what happened, Mr. Greenglass, after you handed this sketch and the descriptive material concerning the atomic bomb to Rosenberg? What did he do, what did the others there do?

A. Well, he stepped into another room and he read it and he came out and he said "This is very good. We ought to have this typed up immediately". And my wife said, "We will probably have to correct the grammar involved", because I was more interested in writing down the technical phrases of it than I was in correcting the grammar. So they pulled—they had a bridge table and they brought it into the livingroom, plus a typewriter.

Q. What kind of typewriter?

A. A portable.

[fol. 723] Q. Then what?

A. And they set that up and each sentence was read over and typed down in correct grammatical fashion.

Q. Who did the typing, Mr. Greenglass?

A. Ethel did the typing and Ruth and Julius and Ethel did the correction of the grammar. While this was going on, sometimes there would be stretches where you could do—there wasn't too much changing to be made, and at this time Julius told me that he had stolen the proximity fuse when he was working at Emerson Radio.

Q. He gave you that information on that occasion, is that right?

A. Yes.

Mr. E. H. Bloch: If the Court please, I move to strike out that, the reference to stealing the proximity fuse, upon the ground that it is not related to the charge here. It imputes to the defendants the commission of a separate crime. I hink it injects inflammatory and prejudicial material into this trial, and I ask that it be stricken.

By the Court:

Q. Did he tell you what he did with that proximity fuse?

A. He told me that he took it out in his brief case. That is the same briefcase he brought his lunch in with, and he gave it to Russia.

The Court: All right. Strike out "stealing" and we will [fol. 724] let this latter part stand.

Mr. E. H. Bloch: I respectfully except to your Honor's ruling.

The Court: You must remember that the conspiracy charge is a general statement to turn over information to the U. S. S. R. pertaining to national defense. It is not limited to atomic information.

Mr. E. H. Bloch: I understand that, your Honor; in the first place on the present state of the record, no time has been mentioned here with respect to this particular incident, and there is no relation so far as I can see between this stealing or this secretion of this proximity fuse with the general conspiracy which is the specific subject of this charge.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except and I now ask for the withdrawal of a juror and a mistrial.

The Court: Denied.

Mr. E. H. Bloch: Upon the basis of the Court's ruling.

The Court: Denied.

Mr. E. H. Bloch: I respectfully except.

[fol. 725] Q. Did you know that Julius had been working at the Emerson Electric Company?

A. Yes, I did know it.

Q. Did you know what type of work he had been doing?

A. Yes, he was an engineer and inspector out there.

Q. Do you know whether or not he had any connection with Government work?

A. He worked for the Signal Corps, actually.

Q. He was actually in the employ of the Signal Corps?

A. That's right.

Q. Now, about how long a period of time would you say was consumed in this process of the typing by Mr. Rosenberg of the information that you had furnished to Mr. Rosenberg?

A. Oh, I would say it took most of the afternoon, about 5 o'clock, I guess, when we got done with it.

Q. Did you have any further conversation before you left the apartment on that occasion?

A. Well, that——

Q. Go ahead. I was going to ask you specifically about one thing. Did you have any conversation with Rosenberg about how long you were going to remain in the United States Army at Los Alamos?

A. Oh, I just stated that as soon as I could possibly get out, I was going to go out of the Army, get a discharge.

Q. What did he say?

A. He said he'd want me to stay up in Los Alamos if I could get a job up there as a civilian, stay there as a civilian.

[fol. 726] Q. Did he tell you why he wanted you to stay there?

A. Well, he said that he wanted me to stay there so I could continue to give information.

Q. What did you say?

A. I said I would like to leave the place, I would like to come home.

Q. Now, about how long did this furlough last in September? Was it a long furlough or a short one?

A. It was fairly long. The dates on this occasion—I don't know exactly when I got back to Los Alamos.

Q. By the way, you turned—I think you have told us on several occasions, that you turned over this sketch and descriptive material to Rosenberg, is that right?

A. I said that before.

Q. And that it was typed by Mrs. Rosenberg?

A. That's right.

Q. Do you know what happened to the original notes after the typing was completed?

A. The original notes were taken and burnt in the frying pan and then flushed down the drain.

Q. Who did that?

A. Julius did that.

Q. Pardon me?

A. Julius did.

Q. Now, did you return to Los Alamos in September?

A. I did return to Los Alamos in September, yes.

Q. Did there come a time when you obtained a discharge from the Army of the United States?

A. I did.

[fol. 727] Q. When was that?

A. In February, 1946, last day in February.

Q. Where were you discharged?

A. El Paso, Texas, Fort Bliss.

Q. Did you go from Los Alamos to El Paso?

A. That's right.

Q. Did you receive an honorable discharge?

A. I did.

Q. After you were discharged from the Army at the end of February, 1946, where did you go?

A. I went back to New York City.

Q. Where did you take up residence?

A. First at my mother's home, with an aunt, at 64 Sheriff Street, in the same building that my mother lives, and then at 265 Rivington Street.

Q. And you have resided at 265 Rivington Street up to the time of your confinement on this charge?

A. That's right.

Q. Now, after your discharge from the Army and after you returned to New York, did you go into business?

A. I went into business with Julius Rosenberg and my brother and a man by the name of Goldstein.

Q. Which brother of yours do you refer to?

A. Bernard.

Q. Bernard Greenglass; is that correct?

A. That's right.

[fol. 728] Q. How long did you remain in business with Rosenberg and your brother?

A. Till August, 1949.

Q. In that three-year period, from 1946——

The Court: What business was that?

The Witness: It was two businesses, G. & R. Engineering.

By Mr. Cohn:

Q. Is that Greenglass and Rosenberg or Goldstein?

A. Greenglass, Goldstein and Rosenberg.

Q. The "G" covered two partners whose names began with "G" and the "R" is for Rosenberg?

A. That's right; and then the Pitt Machine Products Corporation.

The Court: Until when did you say that was in business—until when?

The Witness: I was in business until August, 1949.

Q. Now, what type of businesses were these, just in general terms?

A. Machine shops.

Q. Machine shops?

A. That's right.

Q. You continued to work as a machinist; is that correct?

A. That's right.

Q. Now, during those three years from February or March, 1946, until August of 1949, did you see Rosenberg at business from time to time?

A. We did—I did.

[fol. 729] Q. Did you have any conversations with him?

A. I did.

Q. Am I correct in stating you saw him very frequently in business?

A. Yes, every day almost.

Q. Did any of these conversations relate to espionage activities?

A. They did.

Q. Would you tell us those conversations which you recall? Try to tell us as best you can when——

Mr. A. Bloch: I object to it unless the time is fixed.
Mr. Cohn: I am just trying to get him to state it.

Q. Try to tell us as best as you can, if you can remember, when or around when each conversation took place.
A. Well, in '46 or '47 Julius Rosenberg made an offer to me to have the Russians pay for part of my schooling and the G. I. Bill of Rights to pay for the other part, and that I should go to college for the purpose of cultivating the friendships of people that I had known at Los Alamos and also to acquire new friendships with people who were in the field of research that are in those colleges, like physics and nuclear energy.

Mr. E. H. Bloch: I am sorry, may I inquire if the witness is now stating what Rosenberg said to him?
The Court: So I understood.
Mr. E. H. Bloch: Are these the words?
[fol. 730] The Witness: Approximately the words.
Mr. E. H. Bloch: All right.

Q. Did he mention any particular institutions which he desired to have you attend?

A. Well, he would have wanted me to go to Chicago, University of Chicago, because there were people there that I had known at Los Alamos and it was a well-known institution and it was doing a lot of good work in the field of nuclear physics.
Q. Did he mention any other institutions?
A. M. I. T., and then later on when N. Y. U. had a nuclear engineering course he wanted me to take that.
Q. Did he give you the names of any scientists with whom he desired you to build up friendships?
A. No; he told me that at Chicago University there were some people that I had gone to school with, I mean, I had been at Los Alamos with, and that I should cultivate their friendships.
Q. Did he specify how much of this money would be furnished by the Russians?
A. He specified that the G. I. Bill of Rights would pay for my schooling and they would give a certain amount of money for living of the student, and he said the Russians

would pay additional money so I could live more comfortably.

Q. Now, did you ever agree to go to any of these schools?

A. I said I would try, but I never bothered.

[fol. 731] Q. You never, in fact, did go; is that right?

A. That's right.

Q. Now, did Rosenberg tell you anything about activities of this kind in which he had engaged?

A. Well, he had told me that he had people going to schools in various places.

The Court: Will you fix the time when he told you this?

The Witness: It was during this period of 1946 to 1949.

The Court: All right.

A. (Continuing) He told me that he had people going to school in various up-State institutions. He never made mention of the institutions, but he said that he was paying students to go to school.

Q. Did he tell you anything else concerning his activities along these lines?

A. He told me that he had people giving him information in up-State New York and in Ohio.

Q. Did he tell you why they were giving him that information?

A. They were giving information to give to the Russians.

Q. Did he mention any particular place in up-State New York from which he was getting information?

A. He mentioned the fact that he was getting informa-

[fol. 731a] tion from General Electric at Schenectady.

Q. General Electric in Schenectady?

A. That's right.

Q. I think you told us he also mentioned he was getting some information from someone in Cleveland; is that right?

A. That's right.

Mr. E. H. Bloch: I am sorry, I think he said Ohio.

Mr. Cohn: I think he did.

[fol. 732] Q. Well, I will ask you, as a matter of fact, did he say anything to you about getting information from someone in Cleveland?

A. Well, once in the course of the conversation in which we were talking about turret lathes, and where they are

manufactured, he told me that he had seen the Hugh Warner-Swasey turret lathe plant at Cleveland, Ohio, and when later I asked him how come he was in Cleveland, Ohio, he stated to me that he was out there to see one of his contacts.

Q. He did not tell you this contact worked at Warner-Swasey?

A. No, he did not.

Q. He said he had been out to see one of his contacts in Cleveland and while there to see the contact he had gone to this plant?

A. That is right.

Q. Did he mention anything to you about a man named Joel Barr?

A. There was a Joel Barr that used to come around to the place and work on certain of his own work and this Joel Barr subsequently went to Europe.

Q. Did Rosenberg ever——

Mr. E. H. Bloch: I move to strike out the latter part of his answer unless this witness can positively tell this Court and jury that he knows about that fact.

The Court: Or unless he was told it by Rosenberg.

Mr. E. H. Bloch: Or, of course, unless it was part—that [fol. 733] is not the way he stated it though, your Honor.

Q. Did you ever have any conversation with Rosenberg about Joel Barr leaving this country?

A. Rosenberg once told me that Joel Barr was leaving this country to study music in Belgium.

Q. That was in the 1946 to 1949 period?

A. It was in the end of the year 1947.

Q. End of the year of 1947?

A. That is right.

Q. Now, don't tell us what the conversation was at this time, but tell us, as a matter of fact, did you, in the year 1950, have another conversation with Rosenberg about Joel Barr's trip to Europe?

A. That is right.

Q. Did Rosenberg mention to you any Government projects concerning which he had obtained information from any of his contacts?

A. Well, once in the presence of my brother, he mentioned a sky platform project.

Q. A stay platform project?

A. Yes.

Q. Which brother do you refer to?

A. Bernard Greenglass.

Q. He was present when Rosenberg mentioned that?

A. That is right.

Q. Did you have any conversation with Rosenberg about the sky platform project?

A. Yes, I had a conversation with him later. I asked him in privacy——

[fol. 734] Mr. A. Bloch: Can you fix the time?

Q. Can you tell us about when this conversation occurred, the period of years, or months, however you can do it?

A. I would say this was '47, late '47. He told me he had gotten this information about the sky platform from one of the boys, as he put it.

Q. Did he tell you just what information had been given to him by one of the boys concerning the sky platform project? Did he describe it to you at all?

A. Yes, he did. He described it in front of my brother, too.

Q. How did he describe it?

A. He said that it was some large vessel which would be suspended at a point of no gravity between the moon and the earth and as a satellite it would spin around the earth.

[fol. 735] Q. Did he tell you from what part of the country that information had been obtained, where the contact was?

A. I don't recall that.

Mr. E. H. Bloch: I did not get that last answer.

(Answer read.)

Q. Did Rosenberg tell you anything about his own dealings with the Russians?

A. Yes, he did.

Q. What did he tell you?

A. He told me that he—if he wanted to get in touch with the Russians he had a means of communicating with them in a motion picture theatre, an alcove where he would put microfilm or messages and Russians would pick it up.

If he wanted to see them in person he would put a message in there and by pre-arrangement they would meet at some lonely spot in Long Island.

Q. Did he mention anything else along those lines?

A. Well, he——

Q. Let me ask you this, did he mention any other projects, Government projects concerning which he had obtained information?

A. He once stated to me in the presence of a worker of ours that they had solved the problem of atomic energy for airplanes, and later on I asked him if this was true, and he said that he had gotten the mathematics on it, the mathematics was solved on this.

[fol. 736] Q. Did he say from where he had gotten this?

A. He said he got it from one of his contacts.

Mr. E. H. Bloch: If the Court please, that last answer, I wonder whether the witness could clarify who was meant by him when he said "they".

The Witness: "They" meaning scientists in this country.

Q. Now, what did you do in August 1949 when you terminated your business association with Rosenberg?

A. I got a job.

Q. Where did you obtain that work?

A. I got a job at Arma Engineering Corporation in research and development, model shop.

Q. Did you continue to see Rosenberg and your sister from time to time socially?

A. I did.

Q. Mr. Greenglass, do you remember the month of February, 1950 last year?

A. I do.

Q. Did you see Rosenberg in your apartment on the day in February, 1950?

A. I did.

Q. Now, before I ask you for the conversation on that date——

Mr. Cohn: Your Honor, I might say I have one more topic left which I do not think I can complete this afternoon; I think I can complete it fairly early in the morning. I do have one or two things which I omitted in the course of my

[fol. 737] examination today. I wonder if I can go back and go over them before recess?

The Court: Go ahead.

Q. You told us on Friday afternoon, Mr. Greenglass, about the atomic explosion that took place at Alamogordo, New Mexico, is that correct?

A. That is correct.

Q. In July of 1945?

A. That is right.

Q. Did you ever furnish any information concerning that atomic explosion to Rosenberg or to Gold?

A. Yes, I furnished information to Gold. I stated to Gold——

Mr. E. H. Bloch: Could we have the time fixed, please?

The Witness: June, 1945.

Q. You say you stated to Gold. Did you state it verbally or was it part of the written report you gave Gold?

A. Part of the written report.

Q. Will you tell us what you put in that report concerning this explosion?

A. I had told him that the explosion at Alamogordo was to be an equivalent amount of H. E., as they thought the atom—the nuclear fission would amount to; in other words, I had thought at the time that it was going to be an H. E. explosion at Alamogordo.

Q. Did you put that information in this report?

[fol. 738] The Court: By "H. E." you mean heavy explosive?

The Witness: High explosive.

Q. Did you put that information in this report?

A. That is right.

The Court: That was before the explosion had taken place?

The Witness: That is right.

The Court: How long before the explosion?

The Witness: About a month before—it was a little more than a month before.

Q. Now, did Rosenberg ever say anything to you about any reward that he had received from the Russians for the work that he had been doing?

A. He stated that he had gotten a watch as a reward.
Q. Did he show you that watch?
A. He did.
Q. Did he tell you that he had received that watch?
A. I don't recall that.
Q. Did he mention anything else that he or his wife received from the Russians as a reward?

Mr. E. H. Bloch: Now, Mr. Cohn, I was wondering whether you would fix the time of this last watch incident.
Mr. Cohn: I will try to do so.

Q. Can you remember when Rosenberg told you about [fol. 739] the watch?
A. I believe it was in January, 1945.
Q. During your furlough in January 1945?
A. Yes.
Q. Now, did he ever mention anything else that he or his wife had received as a reward from the Russians?
A. His wife received also a watch, a woman's watch, and I don't believe it was at the same time.
Q. Your recollection is that she received that at a different time?
A. Later, at a later date.
Q. When were you told about a watch that Mrs. Rosenberg had received, do you remember that?
A. I don't recall when that was but I do recall that my wife told me of it.
Q. You got that information from your wife, is that right?
A. That is right.
Q. Now, was there anything else that they received which they told you about?
A. I believe they told me they received a console table from the Russians.
Q. A console table?
A. That is right.
Q. When did they tell you about that?
A. That was after I had gotten out of the Army.
Q. Did you ever see that table?
A. I did.
Q. At their home?

A. I did.

Mr. Cohn: I think this would be a very good stopping point, your Honor.

[fol. 740] The Court: All right. Ladies and gentlemen, we will recess until 10:30 tomorrow morning, of course with the admonition of the Court that you do not discuss this case between yourselves or with anybody else, nor permit anybody to discuss it with you. 10:30 tomorrow morning.

(The jury left the courtroom.)

Mr. Saypol: In respect to that portion of the record which your Honor ordered sealed, may we have leave to have that exposed in two copies: One for the Joint Atomic Energy Committee of Congress and one for the Atomic Energy Commission. Those are classified and they are marked secret.

The Court: That is the very discussion I am having with him—off the record.

(Discussion off the record.)

Mr. Saypol: I withdraw my demand or request.

(Adjourned to March 13, 1951, at 10:30 a. m.)

[fol. 741] New York, March 13, 1951: 10:30 a. m.

TRIAL RESUMED

(Jury present in the jurybox.)

DAVID GREENGLASS, resumed the stand.

Direct examination continued.

By Mr. Cohn:

Q. Mr. Greenglass, I think yesterday afternoon you told us that Rosenberg told you that he had received a watch from the Russians; is that correct?

A. That is correct.

Q. Now, did he tell you he received anything along with that watch?

A. He said he received a citation.

Q. Did he describe the citation at all?

A. He said it had certain privileges with it in case he ever went to Russia.

Q. Mr. Bloch, Sr. would like you to keep your voice up.

A. I will.

Q. Now, I asked you yesterday afternoon if you remembered a visit you received from Rosenberg in February of 1950. Do you remember such a visit?

A. I do.

Q. How do you fix the date of that visit?

A. Well, it was a few days after Fuchs was taken in [fol. 742] England.

Q. A few days after the news of Dr. Fuchs' arrest in England appeared in the papers; is that right?

A. That is right.

Q. Where did this conversation with Rosenberg occur?

A. Partly in my home and partly on the street and in a park.

Q. Did it begin at your home?

A. Yes, it did.

Q. Will you tell us just what happened when he arrived there and what happened after that; what he said and what you said?

A. He came up to my apartment and awakened me. It was about in the middle of the morning. I slept late because I work at night. He said that he would like me to go for a walk with him and we went down the street, down Sheriff Street, toward the Hamilton Fish Park, and we walked around the park, and in the park and during this walk he spoke to me of Fuchs. He told me, he said, "You remember the man who came to see you in Albuquerque? Well, Fuchs was also one of his contacts"; and this man who came to see me in Albuquerque would undoubtedly be arrested soon, and if so would lead to me.

The Court: You mean this is what Rosenberg told you?

The Witness: That is right.

A. (Continuing) And Rosenberg said to me that I would [fol. 742-A] have to leave the country; think it over and we will make plans to go. Well, I told him that I would need money to pay my debts back so I would be able to

leave with a clear head, and Rosenberg said that he didn't think it was necessary to worry about it. But I insisted on it, so he said he would get the money for me from the Russians. He then want on to say—I protested further—— [fol. 743] Mr. E. H. Bloch: I move to strike out the word "protested".

The Court: Tell us what you said.

The Witness: I said, "I wouldn't be able to"—"I didn't think it was wise to go right to the Consulate here and ask for a passport", and he said "Oh, they let other people out who are more important than you are", and I said, "Is that so"? And he said, "Yes, well they let Barr out, Joel Barr, and he was a member of our espionage ring".

Q. Was this the Joel Barr you told us yesterday that Rosenberg had told you had gone to Europe at the end of 1947?

A. That is right.

Q. Go ahead.

A. Well, the conversation continued for a little while and he said, "You'll just have to leave and I want to"—oh, I also said to him "Why doesn't this other guy—fellow leave, the one who came to me in Albuquerque"? And he said, "Well, that's something else again", and I went back home after that.

Q. Now, did you have any further conversations with Rosenberg at later times?

A. Yes.

Q. About leaving the country?

A. Yes, I did.

Q. Will you tell us when the next conversation took place?

A. Well, my wife was in the hospital, she had been badly burned in an accident and it was about the middle of April, [fol. 744] it was just about after—before she came out of the hospital, Julius came to see me and he said I would have to leave the country and—well, that was about the gist of the conversation.

Q. He told you again that you were to leave, is that right?

A. Yes, and that he wanted me to go. Then again there was——

Q. Had he given you any money up to this point?

A. No, no money was given to me up to this point.

Q. When was the next conversation?

A. The next conversation was after my wife had gotten out of the hospital about May or just before—it was probably a little before May, and he came up to my apartment in order to get some stocks from me, some shares that I had for a business enterprise I was in with him, and he at this time told me that I would have to leave the country as soon as possible, he would get the information for me to leave. Then——

The Court: Was there any discussion of the country you were to go to?

The Witness: It came—he said I would have to go via Mexico but he didn't give me the complete information as to that until a little later.

The Court: All right.

Q. Now when was the next conversation with Rosenberg [fol. 745] on this subject?

A. Well, it was after my wife came out of the hospital after giving birth to our youngest child.

Q. About when was that?

A. It was May—it was May 22nd or 23rd, something like that.

Q. In that vicinity?

A. In that vicinity.

Q. Yes?

A. It was the next day after she came out of the hospital that Rosenberg came to see me.

Q. Up at your apartment?

A. At my apartment.

Q. Tell us what he said and what you said.

A. And he came into the apartment and he had a Herald Tribune in his hand with a picture of Harry Gold on it and he said, "This is the gentleman who came to see you in Albuquerque".

Q. Is that the copy of the Herald Tribune carrying the case of Harry Gold's arrest for espionage?

A. That is right.

Q. What did he say?

A. He said, "This is the man who saw you in Albuquerque".

I looked at it and I said I couldn't tell from that picture,

and he said, "Don't worry, I am telling you this is the man and you will have to go out—you will have to leave the country", and he gave me a thousand dollars then and said he would give me $6000. more. We then went for a walk.

[fol. 746] Q. Where did you walk, do you remember?

A. We walked down to Delancey Street and down the Drive.

Q. Did you meet anybody you knew during the course of this walk with Rosenberg?

A. Not on this walk.

Q. Go ahead.

A. We walked down Delancey Street to the Drive, the East River Drive and walked along the Drive, during this time he told me what was necessary to—how I was to leave the country.

Q. Tell us exactly.

Mr. A. Bloch: I move to strike that out. It is not a conversation. It is simply a conclusion of the witness how he was to leave the country.

The Court: Overruled.

Mr. A. Bloch: Exception.

Q. Will you tell us exactly what Rosenberg said to you on that subject?

A. Well, he said that I would have to get a tourist card——

Q. For what country, did he tell you?

A. To go to Mexico.

Q. In other words, the first place you were to go to was Mexico?

A. That is right. First I was to go to the border area and at the border area get a tourist card. In other words, not to get the tourist card at some Mexican Consulate in this city but to wait till we get to the border.

[fol. 747] Q. Yes?

A. He told me that in order to get the tourist card you have to have a letter or you have to be inoculated again at the border—a letter from the doctor saying you were inoculated.

Q. For what, did he tell you?

A. For smallpox.

Q. Did he tell you how he found that out?

A. He said he went to see a doctor and a doctor told him about it and I said I would attend to that.

He then told me I would have to have passport pictures made up.

Q. Passport pictures?

A. Of myself, my wife and my family, and also he gave me a certain form letter to memorize and sign "I. Jackson" at the end of the letter. This letter was to be used when I get to Mexico City. I was to write to the Secretary to the Ambassador of the Soviet Union and state in that letter—I don't recall completely right now but something to the effect about the position of the Soviet Union in the U. N.

Q. Something favorable or unfavorable?

A. It was favorable.

Q. Yes. How were you to sign the letter?

A. I was to sign the letter "I. Jackson".

Q. "I. Jackson".

A. Then I was to wait three days at some place—first, of course, to get a place to stay, some place away from the center of town. Then I was to go with a guide to the [fol. 748] city in my hand——

Q. A guide?

A. A guide.

Q. I see.

A. (Continuing) To the city in my hand, with my middle finger in the—between the pages of the guide—go to a place called Plaz de la Colon and look at the statue of Columbus there—and this would be about 5 o'clock in the afternoon, three days after I had sent the letter.

Q. In other words, you would write a letter and three days after that at 5:00 in the afternoon, you were to be in front of the statue of Columbus in Mexico City with this travel guide in your hand, is that right?

A. That is correct.

Q. All right.

A. I was then to wait until some man was to come up close to me and then I would say "That is a magnificent statue", and that I was from Oklahoma and I hadn't seen a statue like it before, and this man was to say "Oh, there

are much more beautiful statues in Paris". That was to be our identification.

Then he was to give me my passports and additional money so that I could go on with my trip. I was then supposed to continue on probably via Vera Cruz——

Q. Vera Cruz?

A. Vera Cruz.

Q. A seaport in Mexico?

A. That is right.

Mr. E. H. Bloch: If the Court please, the witness said [fol. 749] "probably". Now I want to make certain that he is speaking of his own knowledge.

The Court: Yes, he used the word "probably".

A. (Continuing) Well, I was to continue on to Vera Cruz and then to Sweden or Switzerland, one or the other. I would—in Sweden I was to go to the statue of Lineus in Stockholm and repeat—after sending a letter to the Ambassador of the Soviet Union—to the Secretary of the Ambassador of the Soviet Union, with the same type of letter and also "I. Jackson" as the signature again.

I would then go three days later to the statue of Lineus and with a guide in my hand, with my finger in the place, and a man would come up to the statue about the same time in the evening, about 5 o'clock, and I would repeat that it was a beautiful statue, a magnificent statue—something to that effect, and the man would say "There are much more beautiful ones in Paris", and that was to be our contact.

Then he was to give me my means of transportation to Czechoslovakia, and that is where I was to go.

Q. Was that to be your permanent place?

A. Supposedly that was there I was supposed to go; so far as what went after that I didn't know.

Q. Did Rosenberg tell you what you were to do when you [fol. 750] arrived in Czechoslovakia?

A. Yes, he did.

Q. What did he tell you?

A. He told me to write to the Ambassador of the Soviet Union and say that I was here.

Q. Were you to sign "I. Jackson" this time?

Q. My full name was to be signed, "I. Jackson".

Q. All right. Now, did you write down these instructions or did Rosenberg write them down?

A. Nobody wrote them down. I was told to memorize them at this time and I did memorize them.

Q. Did you have any further conversation with Rosenberg on that day?

A. Well, that was the end of the conversation on that day except that—he said that he probably—that he had to leave the country himself and he was making plans for it, and I said, "Why you"? He said that he was a friend—that he knew Jacob Golos, this man Golos, and probably Bentley knew him.

Q. And that he himself was going to leave the country, is that right?

A. And that he himself was going to leave the country.

Q. Now was there any further conversation with Rosenberg on that occasion?

A. Only that he asked me to memorize it and get everything attended to—the passport photographs.

[fol. 751] Q. What did he tell you about the passport photos; he wanted you to got those yourself, is that right?

A. That is right.

Q. Did he tell you exactly what he wanted to know with regard to the passport photos?

A. Yes, he wanted five copies, five pictures, each with myself, by myself, my wife, and then my wife and the children and then myself with the children, and then I think all of us together, the family altogether.

Q. In other words, these five different poses, he wanted five copies of each one?

A. That is right.

Q. What were you to do with those passport photos after you had obtained them?

A. I was to give it to him later on.

Q. Did he say anything to you about a lawyer?

A. Earlier, up in the apartment, he said that he had gotten a lawyer himself, that I should get one but I never did get one.

Q. Now——

A. He said, in case you are picked up before you leave the country.

Q. Now, was there any further conversation with Rosenberg on that day, or did that complete it?

A. That completed the conversation on that day.

Q. All right, what happened next with relation to this subject?

A. Well, the following Sunday was the first time the [fol. 752] baby had ever come down.

Q. This was the baby that was born a short time before?

A. Yes.

The Court: The baby had come down where?

The Witness: In the street.

The Court: I see.

The Witness: Before that it was in the house.

A. (Continuing) So we took the whole family and went over to a photo shop on Clinton and Delancey Street; it is near the Apollo Theatre.

Q. Near the Apollo Theatre.

A. Yes.

Mr. E. H. Bloch: I just want to clarify this. Is it the contention that the Rosenbergs were along?

Mr. Cohn: No, I don't think he said so.

Mr. E. H. Bloch: I wanted to clarify it.

Q. The Rosenbergs weren't with you, were they?

A. No.

Q. Just you, with your wife and the two children, the people who were supposed to be in these passport photos; is that right?

A. That is right.

Q. Go ahead.

A. We went over to the shop and we had these pictures taken; and later that evening I picked the pictures up after they were done; and it was during the week—it was Memorial Day, and I remember I was off that night, Julius came over, and I gave him the pictures in the hallway, because [fol. 753] there were people in my house and I didn't want the people to see Julius coming to visit me.

Q. Now I think you told us that he had asked you to have five sets of pictures taken; is that right? Five poses, five sets each?

A. That is right.

Q. How many, in fact, did you have taken at this passport photo shop?

A. I had six sets of pictures taken.

Q. How many did you give to Julius?

A. Five sets.

Q. What did you do with the sixth set?

A. I kept it in the drawer.

Q. Was that set after your arrest given to the FBI?

A. I gave it to the FBI.

Mr. Cohn: May we have these marked for identification, please?

(Marked Government's Exhibits 9-A and 9-B for identification.)

Q. By the way, I think you gave four of the five to the FBI, is that right?

A. That is right.

Q. Would you look at Government's Exhibit 9-A for identification and 9-B for identification, Mr. Greenglass, and tell us if those are four of the passport pictures you had taken on that Sunday in May of 1950 showing to witness. [fol. 754] A. That is correct; these are the pictures.

Mr. Cohn: We offer them in evidence, your Honor.

Mr. E. H. Bloch: Objected to as not binding on the defendant Rosenberg.

The Court: Did I not understand the testimony to be that they were taken pursuant to instructions?

Mr. E. H. Bloch: You heard the testimony, your Honor, as well as I did.

The Court: I am asking you a question, Mr. Bloch.

Mr. E. H. Bloch: I think it is a fair implication that these, according to this witness's testimony, these pictures were allegedly taken in accordance with the instructions. I am objecting on the most general ground that I have asserted time and time again, any transactions had by this witness outside the presence of Julius Rosenberg are not binding.

The Court: That is the ground of your objection?

Mr. E. H. Bloch: I am waiving any other technical objections. I want to stick on that main objection.

The Court: All right, upon the ground you assert, it is overruled.

[fol. 755] Mr. Cohn: May they be received, your Honor?
The Court: Yes.

(Government's Exhibits 9-A and 9-B for identification received in evidence.)

Mr. Cohn: May I exhibit them to the jury, your Honor?
The Court: Yes.

(Government's Exhibits 9-A and 9-B shown to the jury.)

Q. Now, I think you told us you handed five of the six sets over to the defendant Rosenberg; is that correct, Mr. Greenglass?

A. That is correct.

Q. What else happened on that occasion? I think you said that was in the hall outside of your apartment.

A. That was in the hall. He said that he would come back and give me the additional money.

Q. Well, had he given you any money up to that point?

A. He had given me a thousand dollars.

Q. When had he given you the thousand dollars?

A. When he first came into the apartment and showed me that Harry Gold had been arrested.

Q. He had given you a thousand dollars in cash; is that right?

A. That is right.

Q. What did you do with that thousand dollars?

[fol. 756] A. I gave it to my wife, who paid bills with it and spent it, generally.

Q. Now, go ahead, from the time when you gave him the passport photos he told you he would give you the additional money?

A. That is right.

Q. Any further conversation at that time?

A. No, he just left.

Q. All right, when was the next conversation on this subject?

A. He came back the following week, I believe it was, and it was in the morning, and he came into the apartment, woke me out of bed and put $4,000, in a paper, brown paper wrapping, on the mantel piece in the bedroom, and he then told me, "Let's go for a walk" because he wants to have me repeat the instructions he had given me.

Q. Instructions he had given you and told you to memorize?

A. That is right. I then went down Columbia Street to Delancey Street, and on the way I met two friends.

Q. What are their names?

A. Hermie and Dianne Einsohn.

Q. Tell us the circumstances of your meeting them.

A. They were across the street from us and Julius said to ignore them but I said I couldn't do that because they are friends of mine and they would wonder why I walked by [fol. 756-A] without saying anything. I crossed the street and Dianne said, "Here is the $40. I owe you", and she paid me by check $40.

[fol. 757] Q. Which they had owed you; is that right?

A. That she had owed me; and Julius had crossed the street, walking a little ahead of us, and I then caught up to Julius again. We went down the drive again and he asked me to repeat to him the various instructions he had given me; and I repeated the instructions to his satisfaction.

Mr. A. Bloch: I object to the last part of the answer, "to his satisfaction".

The Court: Yes, strike out "to his satisfaction".

A. (Continuing) I repeated the instructions, and he said that was fine.

Q. Yes?

A. I then—well, that ended the conversation, and he went his way and I went back to my apartment. Later, he came back. I was under surveillance at the time and——

Q. You thought the FBI——

Mr. E. H. Bloch: I move to strike that out.

The Court: I will strike that out unless you tell us how you knew.

Q. Did you think you were being followed at that time?

A. I did think I was being followed.

Mr. E. H. Bloch: I object to it upon the ground that it is not binding on these defendants.

[fol. 758] The Court: Oh, no, no.

Q. All right, let us go to this—you say you had another conversation with Rosenberg; is that right?

A. I had another conversation with Rosenberg.

Q. Tell us what you said and what he said—well, tell us again when did that take place in relation to the last meeting with him?

A. It was—I would say it was—let's say it was like—it is hard to do without saying that I was being—that I noticed some people following me on a Sunday evening; and he came back——

The Court: Who is "he"?

The Witness: Julius came back during that week, which was—oh, I would say, about May—it was June, the 2nd or 3rd or maybe even the 4th; I can't place it exactly, and as he came into the apartment he said, "Are you being followed"? I said, "Yes, I am". He said, "I just came back from up-State New York to see some people, and I was going to Cleveland, Ohio, but I am going"—"I am not going to go there any more"; and he said to me, "What are you going to do now"? I said, "I am not going to do anything. I am going to sit—I am going to stay right here", and he left.

[fol. 759] Q. Did you see him again after that?

A. Only in court here.

Q. Shortly after that, I believe, on June 15th, you were arrested by agents of the Federal Bureau of Investigation?

A. I was.

Mr. Cohn: May I have this marked for identification, please.

(Marked Government's Exhibit 10 for identification.)

Q. Now, get back to this $4,000. for a minute, Mr. Greenglass. In what form was that when Rosenberg gave it to you? Was it in paper or something like that?

A. It was in tens and twenties, cash paper.

Q. Was it wrapped in any container of any kind?

A. It was wrapped in brown paper.

Q. Brown paper; is that right?

A. That is right.

Q. Will you look at Government's Exhibit 10 for identification and tell us whether or not you can recognize that as the brown wrapping paper in which the $4,000. was contained (showing)?

A. That is the brown paper, wrapping paper it was contained in.

Mr. Cohn: We offer it in evidence, your Honor.

Mr. E. H. Bloch: May I look at it, Mr. Cohn?

[fol. 760] Mr. Cohn: Surely (handing).

Mr. E. H. Bloch: There are certain initials, your Honor, on this. I don't know whether it is the intention of the prosecution to claim that these initials were on at the time he got those papers or not.

Mr. Cohn: No, I will state they were not.

The Court: I take it that is for identification purposes.

Mr. E. H. Bloch: Well, there are a number of initials. That is why I called it to the attention of the Court.

All right, they weren't on. All right.

Mr. Cohn: May it be received, your Honor?

The Court: Yes.

(Government's Exhibit 10 for identification received in evidence.)

Mr. E. H. Bloch: Of course, I object to the introduction of this exhibit upon the ground it is not binding upon the defendant Rosenberg.

The Court: As I understand it, the testimony was that it was in this brown wrapping paper that Mr. Rosenberg delivered the $4,000.

The Witness: That is correct.

Mr. E. H. Bloch: I will withdraw my objection if I just get one clarification. Will the Court ask the witness [fol. 761] whether it is the contention or the testimony of the witness that Rosenberg came with this money wrapped in this bag, that Rosenberg actually carried this bag?

The Court: Was the money right in that wrapping paper?

The Witness: Right in that wrapping paper.

The Court: Very well.

Mr. Cohn: May I show this to the jury, your Honor?

The Court: Yes.

Q. There are some initials on there, Mr. Greenglass. As far as you know, those were not there—there was no

writing on this paper when Rosenberg gave it to you as a container for the money; is that right?

A. No there wasn't.

(Government's Exhibit 10 shown to jury.)

Q. Now, what did you do with the $4,000.

A. Well, at first I had intentions of flushing it down the——

Mr. E. H. Bloch: I move to strike that out.

The Court: Yes, stricken.

A. (Continuing) I started to flush it down the toilet bowl.

Mr. E. H. Bloch: I move to strike that out as not binding upon the defendant Rosenberg, not in his [fol. 762] presence.

The Court: I sustain that. Strike it out.

A. (Continuing) I gave it to my brother-in-law, Louis Abel, to keep for me, and I told him to use it whenever he needs it, take whatever he might need from it, but also that I might need it myself and in such case he would hand it over.

Mr. A. Bloch: I object to anything he said to his brother-in-law in connection with this money, as pure hearsay.

The Court: I am going to sustain that objection.

Mr. Cohn: So the testimony stands, your Honor, he gave it to his brother-in-law, Louis Abel, and any conversation between him and Abel is stricken?

The Court: Yes.

Mr. Cohn: Very well, your Honor.

Q. Now, following your arrest by agents of the Federal Bureau of Investigation in June, you had occasion to talk to them frequently?

A. I did.

Q. Have you had occasion to talk to Mr. Saypol, to me, members of Mr. Saypol's staff?

A. I did.

Q. At any time, in any of those conversations, has any promise of any kind ever been made to you as consideration or anything else for your testifying on this witness

stand or telling the facts to any agency of the United [fol. 763] States Government?

Mr. E. H. Bloch: Before you answer, please, I object to it upon the ground that it is improper direct. I also object to the form of the question.

Mr. Cohn: I withdraw it.

The Court: Pardon?

Mr. Cohn: I will withdraw the question, your Honor.

The Court: All right.

Mr. Cohn: Mr. Bloch may examine, your Honor.

Cross-examination.

By Mr. E. H. Bloch:

Q. Did you just testify that you didn't see your brother-in-law, Julius Rosenberg, from the time that you told him that you were going to stay here and you weren't going to leave the country, until you appeared here in court?

A. I did.

Q. Was that the truth?

A. Well, I had seen him.

Q. Was it the truth?

A. That was not the truth.

Q. You did see him, didn't you, between that period?

A. I did.

The Court: W-ere did you see him?

The Witness: I saw him in jail.

The Court: Did you talk to him?

The Witness: No.

The Court: You mean you just saw him; you looked at [fol. 764] him and you saw him?

The Witness: They brought us into a room together, the authorities at West Street, and told us to stay apart and I didn't say anything to him and he said nothing to me.

The Court: All right.

Q. Now Mr. Greenglass, I believe you testified that your wife came out to visit you in New Mexico on November 29, 1944, which was at or about the date of your second wedding anniversary; is that correct?

A. I testified that she came out around that date.

Q. Around, about that. When is your wedding anniversary?

A. November 29th is my wedding anniversary.

Q. And when did your wife arrive at Albuquerque, New Mexico?

A. I can't tell exactly when.

Q. When did you first see her at or about that time?

A. It was during a five-day vacation, furlough, and I did not know exactly the date that I got into Albuquerque.

Q. At any rate, there came a time when you met your wife on that five-day furlough?

A. That is correct.

Q. Was that the first time that you heard from anybody's lips an invitation to you to engage in spying?

A. That is correct.

Q. And that invitation came from the mouth of your [fol. 765] wife; is that not so?

A. That is correct.

Q. There was nobody else present besides you and your wife at that time?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. I believe you testified you took a walk with her?

A. That is correct.

Q. And that is when she told you about spying; is that right?

A. That is right.

Q. The Rosenbergs weren't around, were they?

A. No.

Q. Were the Rosenbergs there?

A. They were not.

Q. And I believe you testified—you correct me whenever you think I am quoting your testimony or paraphrasing your testimony incorrectly—that you became frightened and you told your wife that you would not do it; is that correct?

A. That is right.

Q. And then I believe you testified further the following morning you told your wife that you would do it?

A. That is right.

Q. And you not only told your wife that you would do it, but right there and then when you told her that, you disclosed information concerning some of the personnel at the Los Alamos project; is that correct?

A. It was not right then and there. It was out in the street.

[fol. 766] Q. Well, how long after you indicated to your wife that you were willing to engage in this illegal work did you tell her the names of some of the personnel at Los Alamos?

A. It was not long after; during the same day.

Q. It was part of the same conversation, was it not?

A. Almost.

Q. Now, during the time——

Mr. E. H. Bloch: Withdrawn.

Q. From the time that you told your wife that you were not interested and that you wouldn't do this work, to the following morning when you told her you would, did you consult with anybody?

A. I consulted with memories and voices in my mind.

Q. Physically, did you consult with anybody?

A. No.

Q. Did you see the Rosenbergs during that period?

A. No.

Q. Did you talk to the Rosenbergs by telephone during that period?

A. No.

Q. How old were you at this time?

A. 22.

Q. And when you finally said to your wife the following morning after she invited you to engage in spying, you did this and said this and then disclosed information [fol. 767] of your own free will; isn't that correct?

A. That is correct.

Q. You knew at that time, did you not, that you were engaging in the commission of a very serious crime?

A. I did.

Q. You had been briefed and indoctrinated, had you not, in Oak Ridge, Tennessee, when you first came there, and during your stay there, and also at Los Alamos, when

you were transferred from Oak Ridge, about espionage; is that not correct?

A. That is correct.

Q. And you were briefed to the extent of having read to you the espionage law; is that correct?

A. Parts of the espionage law.

[fol. 768] Q. Do you remember which parts?

A. I haven't the slightest recollection.

Q. Were you told by your instructors at Oak Ridge, Tennessee or at Los Alamos about the penalty for committing espionage?

A. Most likely I was but I don't remember it.

Q. Did it occur to you on November 29, 1944 or November 30, 1944—and I don't want to quibble about the date—at any rate, did it occur to you at the time that you finally said to your wife "I will do this" and then transmitted to her certain information, that there was a possible penalty of death for espionage?

A. Yes.

Q. You knew that?

A. I did.

Q. When you said to your wife "Yes, I will do it"—is that correct?

A. That is correct.

Q. Are you aware that you are smiling?

A. Not very.

Q. Now how long had you been in the Army when you were assigned to Los Alamos?

A. I had been in from April '43 to July—August '44.

Q. That is approximately a year and five months.

A. That is about it.

Q. Is that rough enough?

A. Yes.

Q. Had anybody prior to the time that your wife came down to Los Alamos and invited you to spy, ever made any overture to you to steal information from the military [fol. 769] authorities?

A. No one.

Q. And from the time in the latter part of November 1944 until your entire career or during your entire career in the Army, you continued to spy, did you not?

A. I did.

Q. And you received money for that, did you not?

A. I did.

Q. You received $500. from Harry Gold in Albuquerque, New Mexico for that, did you not?

A. I did.

Q. Did you ever offer to return that money?

A. I did not.

Q. Did you use that money for your own personal use or the use of your wife and the other members of your family?

A. I did.

Q. What did you do with the $500. that you received from Gold?

A. I gave it to my wife and she used it to live on.

Q. Did she deposit it in the bank?

A. She did.

Q. Now, Mr. Greenglass, you had been to various camps prior to the time that you were assigned to Los Alamos, isn't that correct?

A. That is correct.

Q. And your wife had visited you at camps before you had been assigned to Los Alamos, is that correct?

A. That is not exactly correct.

Q. Did your wife ever visit you at any of the camps [fol. 770] at which you were stationed prior to the time you were assigned to Los Alamos?

A. One camp.

Q. And what camp was that?

A. Pomona, California—Pomona Air Base.

Q. And your wife at that time lived in New York, did she not?

A. She did.

Q. And she took a trip from New York out to California to see you?

A. That is right.

Q. Now when was this?

A. This was the late winter or early spring of '44.

Q. And how long did your wife stay?

A. About two, three months.

Q. And did she have an apartment?

A. Yes.

Q. And did you live with her at that apartment?

A. I did.

Q. And did your wife work?

A. She did.

Q. In or about the camp, in order to sustain herself?

A. She worked away from the camp.

Q. I said in or about the camp.

A. She did.

Q. She didn't work in the camp proper but she worked in some enterprise in the vicinity of the camp?

A. That is right.

Q. And after this incident in the latter part of November 1944 did your wife visit you at any other of the camps—I withdraw that, I am sorry.

[fol. 771] Q. You were stationed at Los Alamos, continuously after you had been assigned there up to and including the date of your discharge, is that correct?

A. No; the date of my discharge I was discharged from——

Q. El Paso, Texas?

A. —El Paso, Texas.

Q. But otherwise you were always at the Los Alamos project?

A. That is right.

Q. Now did your wife visit with you and live with you at or about the Los Alamos project or in or about the City of Albuquerque after your five-day furlough was up in the latter part of November, 1944?

A. As I said before, in the early spring of 1945 she came to live with me.

Q. And how long did she live with you?

A. She stayed with me until I came home.

Q. And did she work?

A. She worked part of the time; part of the time she was unable to work.

Q. And you were advanced from time to time, weren't you, in your gradings in the Army?

A. I was.

Q. And your salary was increased.

A. That's right.

Q. And that made it easier economically, isn't that correct?

A. To a degree.

Q. Now let me ask you this: You have testified you got a thousand dollars from Rosenberg in 1950.

[fol. 772] Q. And you insisted upon that money to pay your debts, isn't that correct?

A. That is correct.

Q. Did you pay your debts?

A. I did not. May I clarify that?

Q. No.

The Court: Yes.

Mr. E. H. Bloch: Now——

The Court: Yes.

Mr. E. H. Bloch: I object to——

The Court: Your objection is overruled.

Mr. E. H. Bloch: I respectfully except.

The Court: I told you you do not need an exception.

Mr. E. H. Bloch: Yes; I am sorry, your Honor.

The Witness: (To the Court) The thousand dollars I spent paying debts of household type——

Mr. E. H. Bloch: For household type.

The Witness: (Continuing) I mean payments on furniture and things of that nature. The debts I was referring to, when I said about paying debts to Rosenberg, were personal debts incurred because of a business enterprise I was in that I had never even borrowed in the first place.

The Court: Excuse me, this thousand dollars that you got in 1950, I want you to get this clear in my mind, was [fol. 773] that in payment of information which you had at or about that time turned over to Rosenberg or was that in anticipation of your trip out of the country?

The Witness: In anticipation of the trip out of the country.

Q. All right. Now it is your testimony now that you used those thousand dollars to pay off certain debts on the household, is that right?

A. That is right.

Q. That was for your own use, was it not?

A. That is correct.

Q. And that was for the use of your family, is that right?

A. That is correct.

Q. When you, as you testified, finally told Rosenberg that you were not going to leave the country and you were going to stay right here——

A. Yes.

Q. —did you ever offer to give him back that thousand dollars?

A. I did not.

Q. Now then, I think you testified further that you received an additional $4000. from Rosenberg sometime in June, is that right—sometime in June 1950?

A. That's right.

Q. Wrapped in that brown bag which is now Government's Exhibit——

The Court: 10.

Q. —10?

A. That's right.

[fol. 774] Q. When you told Rosenberg, as you testified, that you were not going to leave the country, did you offer to return that $4,000?

A. I did not.

Q. And I believe you testified that you turned those $4000. over to a brother-in-law?

A. That's right.

Q. Do you know now that that $4000. or a major part of that $4000. went to pay your lawyer?

Mr. Cohn: Your Honor, I merely comment that I was halted in my attempts to develop the history of that $4000. and where it went, which is quite relevant to the rest of the Government's proof. If Mr. Bloch wants to go ahead and do it, all right.

The Court: I will let him go ahead if he is——

Mr. E. H. Bloch: I have a different purpose in doing it.

The Court: If he is going to open the door, I will let him.

Mr. E. H. Bloch: I am perfectly willing to open the door.

Mr. Cohn: Very well.

By Mr. E. H. Bloch:

Q. Do you know now that that $4000. or a major part of it went to pay your lawyer?

A. I do.

Q. Have you been told how much of that $4000. went to pay your lawyer?

A. Yes.

[fol. 775] Q. All of it?

A. All of it.

Q. When did you know that you had a lawyer representing you subsequent to the time of your arrest in June 1950?

A. The FBI said that I could have a lawyer. I called up my——

The Court: Speak louder, please.

Q. Up, up, up.

A. The FBI agents told me that I could have a lawyer, so I called up my brother-in-law and told him to get in touch with O. John Rogge.

Q. That was your suggestion.

A. At my suggestion.

Q. All right. And then after that did Mr. Rogge come down to see you?

A. He sent his partner, Mr. Fabricant and subsequently Mr. Rogge came himself.

Q. Now how long after you had somebody communicate with your brother-in-law to hire Mr. Rogge did Mr. Fabricant come down to see you?

A. The next morning—I should say the same day because it was morning when I got in touch with my brother-in-law.

Q. Do you remember when you were arrested?

A. I do.

Q. You were taken, were you not, from your place of employment and brought down to this building?

A. I was not.

Q. Were you apprehended in your home?

A. I was in my home making a formula when they arrested me.

[fol. 776] The Court: Making a what?

Mr. E. H. Bloch: A formula.

The Witness: A formula for the baby.

Q. And what day did the FBI come around to arrest you?

A. It was in the daytime, in the middle of the week, just before I was going to work.

Q. Do you remember what date in June?

A. It was the 15th, I believe, of June.

Q. And after some of the representatives of the FBI came in to your home did they tell you that you were under arrest?

A. No.

Q. Did they ask you to accompany them some place?

A. They did.

Q. And where did they ask you to go?

A. I came to this building.

Q. How many representatives of the Federal Bureau of Investigation came around to your home at the time that you were apprehended?

A. Four.

Q. And at what time was this?

A. In the afternoon at about 2 o'clock, I suppose.

Q. Now, do you now know the names of the four FBI representatives who arrested you?

A. I do.

Q. And will you name them, please?

A. John Harrington, Leo Frutkin——

Mr. A. Bloch: I can't hear him.

[fol. 777] Q. Counsel at the table cannot hear you.

A. —John W. Lewis and Bill Norton.

Q. You know their first names too, don't you——

A. I do.

Q. —by now. And what time did you get down here in this Federal Building?

A. I would say it was about 8 o'clock at night.

Q. Eight at night?

A. Yes.

Q. Maybe I misunderstood you. What time did the FBI men come to your home to arrest you?

A. They came at 2 o'clock.

Q. And after they were in your home did they stay with you in your home?

A. Yes.

Q. How long did they s-ay with you in your home?

A. Till about, I would say, 7:30 or so.

Q. And were you questioned during those five hours at your home?

A. On and off.

Q. Well, when you say "on and off" did some FBI man stay with you during that entire period?

A. No; I ate my lunch, I made the formula——

Q. No, listen to my question, please. Did some FBI man stay with you during this entire five or five and a half hours?

A. No, not all the time.

Q. Did they all leave at one time?

A. They were in other rooms of the apartment.

[fol. 778] Q. Now when I talk about your home I am including every room in your apartment. I am going to ask you again, did the FBI men who came down at or about 2 o'clock stay with you in any of the rooms of your apartment for about five or five and a half hours?

A. That is correct.

Q. All four of them?

A. At first there was two and then two more came up.

The Court: Out of that five and a half hours about how much time would you say was taken up in questioning?

The Witness: Maybe an hour.

Q. And what did they do the rest of the time?

A. They were searching my apartment.

Q. Do you know what they took from your apartment?

A. I do.

Q. You watched them search?

A. I did.

Q. Did the FBI man take from your apartment any writing, any document, any paper, any memorandum in the handwriting of Julius Rosenberg?

A. Yes, they did.

Q. What?

A. Some notes that he had from college days.

Q. Anything else?

A. Well, there was——

Mr. Cohn: I might say here if the witness knows, your Honor.

[fol. 779] Mr. E. H. Bloch: I am asking him. I tried to lay the foundation.

A. There was a trunk full of letters, and I don't know what was in there exactly, and if there was stuff in there, they did take that.

Q. Letters in the handwriting of Julius Rosenberg?

A. Well, I don't know.

Q. Well, I am trying to direct your attention specifically and exclusively——

A. There were letters——

Q. Now just listen and try to follow me—exclusively to this, and it is very simple: Did you see the FBI men who came to your apartment on the date they arrested you, take from your apartment any writing, whether in the form of a document or a note or a memorandum in the hand of Julius Rosenberg outside now of the college notes that you say were in his handwriting?

A. No.

Q. And did the FBI men take from your apartment any writing, whether in the form of a document or memoranda or any scrap of paper of any kind in the handwriting of your sister Ethel?

A. I didn't see it.

Q. Well, if you didn't see it you don't know.

A. But it might have been inside the trunk full of letters. We couldn't open the trunk. That is the only reason I didn't see it.

Q. Did the FBI men finally open the trunk?

[fol. 780] A. Yes—not there, though; not in my presence.

Q. Did you see them open the trunk?

A. No, I did not.

Q. Did they take the trunk away from your apartment?

A. They did.

Q. Now, so far as I know, outside of the college notes that were made by Julius Rosenberg—when you say "col-

lege notes" I am assuring you mean notes made by Rosenberg when he was attending college, is that right?

A. That's correct.

Q. Outside of that writing do you know whether there was in your house on or about June 16, 1950 or June 15, 1950 any writing or written matter in the handwriting of either Julius Rosenberg or Ethel Rosenberg?

A. I didn't know, no.

The Court: We will take our recess at this point.

(Short recess.)

Q. Now, Mr. Greenglass, when were you inducted into the United States Army?

A. April '43.

Q. Do you remember the date?

A. The 12th.

Q. April 12th. Where?

A. In New York City.

Q. And specifically where in New York City.

A. At the induction center at Grand Central Palace.

Q. Were you drafted?

A. I was.

[fol. 781] The Court: Speak up please, Mr. Greenglass.

Mr. E. H. Bloch: I am going to stand all the way back here, your Honor; maybe that will help.

(Mr. E. H. Bloch steps farther back to the railing.)

Q. At that induction center in April 1943 did you take an oath?

A. I did.

Q. Did you raise your right hand and together with the other citizens who were inducted into the Armed Services with you swear to certain things?

A. I did.

Q. Do you remember the oath you took?

A. I don't.

Q. At any rate, you know that you violated that oath, don't you?

A. I know it.

Q. And you knew when you said to your wife, "Yes, I

am going to give you the information", that took place somewhere in the latter part of November 1944, that you were violating the oath that you took here in New York City at the time of your induction—did you know that?

A. I did.

Q. Did it enter your mind?

A. Violation of that oath did not enter my mind.

Q. Did you know that you were besmirching the name and reputation——

Mr. Cohn: Well I will object to this characterization.

Mr. E. H. Bloch: I haven't finished.

[fol. 781-A] The Court: He hasn't finished. I want to hear the question.

Q. —of the uniform of the soldiers of the United States?

[fol. 782] Mr. Cohn: I will object now, your Honor, to the conclusory terms used in the question. That is clearly improper.

The Court: I will overrule the objection.

A. I did not think so at the time.

Q. The Espionage Act—withdrawn.

Q. You had been briefed on the Espionage Act, had you not?

A. I did—I was.

Q. You knew at that time that is was a crime for anybody who had intent or reason to believe that it would advantage a foreign power to communicate any information relating to the national defense of the United States?

A. I knew that.

Q. To somebody else who was unauthorized, particularly a foreign nation or the citizen or subject of a foreign nation? You knew that much about the Espionage Act, didn't you?

A. Yes.

Q. And you knew it was a crime to conspire to violate the Espionage Act in the latter part of November 1944, didn't you?

A. I did.

Q. And you say now that you did not know at that time that when you were giving your wife unauthorized information you were besmirching the uniform——

The Court: I do not believe——

Q. —of the United States Army?

[fol. 783] The Court: I don't believe the question was whether he knew—whether he believed, wasn't that the question?

Mr. E. H. Bloch: I will change it to "believe".

A. I did not believe that.

Q. You did not believe that.

The Court: Did you——

Q. Did you believe you were——

Mr. E. H. Bloch: I am sorry, your Honor.

The Court: Go ahead.

Q. Did you believe you were doing an honorable or dishonorable thing?

A. I didn't even think of it that way.

Q. All right.

The Court: How did you think of it?

The Witness: I thought of it from what I had—on the basis of the philosophy I believed in. I felt it was the right thing to do at that time.

Q. You felt it was an honorable thing to do; is that what you are trying to tell us?

A. The right thing to do according to my philosophy at that time.

Q. All right, I will accept the word "philosophy". You felt it was the right thing to do?

A. That is right.

[fol. 784] Q. And did you continue to think that what you were doing after November 29, 1944, and up to and including the time that you got out of the Army, that you were doing the right thing?

A. I was having my doubts.

Q. When did you begin to have doubts?

A. Almost as soon as I started to do it.

Q. And tell me, if you can—and I want you to fix the time as exactly as you can, what you meant in terms of time when you began to have doubts as to the rightness of what you were doing.

A. I don't understand your question.

The Court: I do not understand it either.

Q. All right, let me make it easier. Did you begin to have doubts in December 1944?

A. I started to have doubts——

Q. Now will you answer my question?

The Court: Wait a minute. Let him answer it. It is not any easy question to answer.

Mr. E. H. Bloch: I want him to give me the exact date.

The Court: So let him answer it——

Mr. E. H. Bloch: All right.

The Court: And please, Mr. Bloch, don't interrupt me while I am talking.

Mr. E. H. Bloch: All right.

[fol. 785] The Court: You have a bad habit of doing it.

Mr. E. H. Bloch: I am sorry, I don't mean to do it.

A. I started to have doubts almost as soon as I said that I was going to give the information.

Q. And that was in the latter part of November 1944, but you did give information, did you not——

A. I did.

Q. —from that time on right through 1945?

A. That's right.

The Court: Now you saw Mr. Rosenberg in January 1950, within a short period of time after you had these doubts that you speak of; did you relate to him on that occasion that you had doubts about the propriety of it?

Mr. Cohn: Your Honor said "January 1950".

The Court: I am sorry—1945. Did you say anything to him about your doubts on the propriety of what you were doing?

The Witness: No, I did not say anything to him because——

Mr. E. H. Bloch: I move to strike out everything after "because".

The Court: No, let me have it.

Mr. E. H. Bloch: I respectfully except.

The Witness: —because, as I said, when I first started [fol. 786] to do it it was one of the motivating factors for doing it.

Q. I am sorry, I cannot hear that at all.

A. I had a kind of a hero-worship there and I did not want my hero to fail, and I was doing the wrong thing by him. That is exactly why I did not stop the thing after I had the doubts.

Q. You say you had a hero-worship?

A. That is right.

Q. Who was your hero?

A. Julius Rosenberg.

Q. I see. Now tell me, did you have doubts when you passed information to Harry Gold in Albuquerque, New Mexico,——

A. I did.

Q. —some time in 1945?

A. I did.

Q. And you say that was in June 1945, is that correct?

A. That's right.

Q. Did you consider at that time that you were passing to him very important information?

A. I did.

Q. And did you consider that that information was secret?

A. I did.

Q. And you knew that that information was unauthorized?

A. I did.

Q. To be communicated to any person outside of the camp itself, isn't that right?

A. That is right.

Q. And did you have any doubts when you took $500. from Mr. Gold for passing that information?

[fol. 787] A. I still had doubts.

Q. You still had doubts, but you took the money and you handed it to your wife?

A. I did.

Q. And that money was used for your house and the use of your wife, is that correct?

A. That's right.

Q. And did you have any doubts when you, as you state, got $200. from Julius Rosenberg in September 1945 in New York City?

A. I did.

Q. You took the money?

A. I did.

Q. And that was used for your benefit and the benefit of your wife and your family; is that correct?

A. That is correct.

Q. Did you have any doubts when you, as you testified, got a thousand dollars from Mr. Rosenberg in June 1950?

A. I did.

Q. But you took that money and you used it to pay off household debts; isn't that correct?

A. Well,——

Q. Did you or didn't you?

A. I did take that money for that reason.

Q. Did you have any doubts when you took that——

The Court: Are you finished with your answer?

The Witness: I would like to answer.

The Court: Well, we are not going to know when you [fol. 788] are finished or not unless you say you want to answer.

A. (Continuing) About that thousand dollars, I felt that I was giving nothing for this thousand dollars; I had plenty of headaches and I felt the thousand dollars was not coming out of Julius Rosenberg's pocket, it was coming out of the Russians' pocket and it didn't bother me one bit to take it, or the $4000. either.

Q. You had no qualms at all about taking the $1000. or the $4000., did you?

A. Not at all.

Q. Even though that money, as you say, was given to you for purposes of flight?

A. That is right.

Q. You never offered to return that money?

A. I certainly did not.

Q. Even though you had $4,000. of it left and you had determined not to flee?

The Court: Wait a minute. Wait, wait.

Mr. E. H. Bloch: I am sorry.

The Court: Your question is a very clumsy question. It is several questions. It is summation, it is everything all mixed up. Let's break it down.

Did you offer to return the $4,000.?

Q. Did you have any qualms about not returning the $4,000. after you had determined not to leave the country?

A. I had no qualms at all.

[fol. 789] Q. All right. Now let's go back to the end of your Army career for one moment. You testified on direct examination, did you not, that you received an honorable discharge?

A. I did.

Q. Did you consider that the services that you rendered to the United States during your Army career warranted an honorable discharge?

Mr. Cohn: I object to that.

The Court: I will overrule it. Go ahead.

A. I did my work as a soldier and produced what I had to produce and there was no argument about my work, and since the information went to a supposed ally at the time, I had no qualms or doubts that I deserved the honorable discharge.

Q. And you felt at that time you were entitled to an honorable discharge; is that right?

A. That is right.

The Court: Do you feel that way today?

Q. Do you feel that way now?

A. No, I don't.

Q. When did you change your mind as to whether or not you were entitled to an honorable discharge?

A. I never though about it until this moment.

Q. Now that you have thought about it, do you believe that you were not entitled to an honorable discharge?

A. In the light of today's events, I was not entitled to an honorable dischaarge.

[fol. 790] Q. Your honorable discharge has never been revoked, has it?

A. It has not.

Q. And so, on the record you still have an honorable discharge from the United States Army?

A. I have.

Q. Feeling as you do now, that you were not entitled to the honorable discharge, do you intend, as of this moment,

to ask the United States Government to revoke that honorable discharge?

Mr. Cohn: I object to that, your Honor, as incompetent, irrelevant and immaterial.

The Court: I will sustain it.

Mr. E. H. Bloch: I respectfully except.

By the Court:

Q. Now, do you know, Mr. Greenglass, of your own knowledge, whether it is the policy of the Army not to move with respect to court martial or revoking of honorable discharges, while there are criminal proceedings pending in a court?

A. I have never heard of the Army taking a discharge, an honorable discharge, away from a man unless it was during the time, that it was brought out during the time of the service in the Army. That is my knowledge.

By Mr. E. H. Bloch:

Q. Mr. Greenglass, you now know——

A. That is my knowledge.

[fol. 791] Q. I can't tell when you finish. I don't want to interrupt.

A. Go ahead.

Q. You know now, don't you, that that honorable discharge was procured from the United States Government by you through fraud, because you concealed your illegal acts; isn't that correct?

Mr. Cohn: Your Honor——

The Court: I think we have gone into the subject enough.

Mr. E. H. Bloch: That was the last question on this.

The Court: I will sustain the objection.

Mr. Bloch: I respectfully except.

Q. Now, tell me, Mr. Greenglass, when did you first meet your wife?

A. I don't remember exactly when I met my wife.

Q. Can you give us the year?

A. I can't give you the year.

Q. Did you meet your wife in New York City?

A. I did.

Q. Do you remember where you met your wife for the first time?

A. We lived in the same neighborhood together for many years and I just don't remember when she started to go with our crowd.

Q. Well, is it a fair statement then that you have known [fol. 792] your wife since childhood days?

A. I do.

Q. Did there come a time when you proposed marriage to her?

A. I did.

Q. When was that?

A. I——

Q. Approximately?

A. I don't believe I ever proposed marriage. It just was understood we were to be married.

Q. All right, when was there an understanding between you that you were going to get married?

A. I can't give you the year of that, either.

Q. All right. At any rate, when you began to see your wife in a fiance and fiancee basis, did you love her?

A. I did.

Q. Did you love her when you married her?

A. I did.

Q. And do you love her today?

A. I do.

Q. And you have loved her during that entire time that we have mentioned in the last question; isn't that right?

A. I do.

Q. You love her very dearly, don't you?

A. I do.

Q. Do you love her more than you love yourself?

The Court: Oh, I think——

A. I do.

Mr. E. H. Bloch: I am satisfied with the answer.

[fol. 793] Q. Do you love your children?

A. I do.

Q. Very much?

A. Yes.

The Court: I dare say that would be a difficult question for any of us to answer.

Mr. E. H. Bloch: I think so.

The Court: Do we love somebody more than we love ourselves?

Mr. Bloch: I could retort, but I am refraining. We are dealing with a peculiar kind of witness.

Mr. Saypol: I object to that.

Mr. Cohn: I move that be stricken.

The Court: Yes, that will be stricken. I suppose all the Government witnesses are peculiar in the eyes of the defense.

Mr. Cohn: Yes, and vice versa.

Mr. E. H. Bloch: Now, I could say something but I am refraining.

The Court: All right.

Q. Do you bear any affection for your brother Bernie?

A. I do.

Q. Do you bear any affection for your sister Ethel?

A. I do.

Q. You realize, do you not, that Ethel is being tried here on a charge of conspiracy to commit espionage?

A. I do.

[fol. 794] Q. And you realize the grave implications of that charge?

A. I do.

Q. And you realize the possible death penalty, in the event that Ethel is convicted by this jury, do you not?

A. I do.

Q. And you want to tell——

The Court: Do you realize also that the matter of penalty is a matter entirely within my jurisdiction, not within the jurisdiction of the jury?

The Witness: I understand that, too.

Mr. E. H. Bloch: That is why I used the word "possible", your Honor.

Q. And you bear affection for her?

A. I do.

Q. This moment?

A. At this moment.

Q. And yesterday?

A. And yesterday.
Q. And the day before yesterday?

The Court: Well now, how far are you going to go?

A. As far back as I ever met her and knew her.
Q. I am sorry, I can't hear you.

Mr. Cohn: Mr. Bloch can't hear, your Honor, because he keeps interrupting the witness's answer.
Mr. E. H. Bloch: Maybe you are right.
The Court: Well, let's not take this day by day. Let's ask the general question.

[fol. 795] Q. At any rate, at present you bear an affection for Ethel?
A. I do.
Q. Do you bear an affection for your brother-in-law, Julius?
A. I do.
Q. Now, you testified, I believe, that you had two brothers and one sister.
A. That is right.
Q. Who is the other brother?
A. Samuel.
Q. Is Samuel a full brother of yours?
A. As far as I know.
Q. From the same mother and the same father?
A. That is right.
Q. And Bernie is from the same mother and same father?
A. That is right.
Q. And Ethel is from the same mother and the same father?
A. That is right.
Q. And were you and Ethel brought up in your parents' home together?
A. Certainly.
Q. In New York City?
A. That is right.
Q. Sheriff Street?
A. That is right.
Q. And did you continue to live in that same house together with your parents until Ethel was married?

A. That is correct.

Q. And how old was Ethel at the time she was married to Julius?

A. It was 1939; it is 10, 11 years ago. I guess she was about 22.

[fol. 795-A] Q. And how old were you at the time?

The Court: Well, you said she was six years older. You must have been 16.

The Witness: No, I was about 17, I guess.

Q. You were about 17?

A. Yes.

[fol. 796] Q. And after your sister Ethel——

Mr. E. H. Bloch: Withdrawn.

Q. Now, after your sister Ethel married Julius, did she move out of your mother's house?

A. She did.

Q. And the house where you resided?

A. She did.

Q. And did you continue to see Ethel and your brother-in-law Julius after Ethel moved out of the house?

A. I did.

Q. Did you visit them at their home?

A. I did.

Q. Now, do you remember when your sister Ethel and Julius moved into an apartment at Knickerbocker Village?

A. Do I remember the date?

Q. Yes.

A. I don't remember the exact date.

Q. Do you remember the year?

A. I don't.

Q. If I told you in 1942, would that refresh your recollection?

A. It still wouldn't refresh my recollection.

Q. All right. After you were married to your wife, did you and your wife see Ethel and Julius at your mother's house about once a week?

A. I wouldn't say that. I know——

Q. About?

A. I wouldn't even say that, because I worked——

Q. Did you continue——

The Court: Let him finish.

[fol. 797] A. (Continuing) Because I worked nights at the time and saw very few people at the time, but I did see them frequently.

Q. You did see them frequently?

A. Yes.

Q. Did they visit you at your house after you were married?

A. No.

Q. Hardly at all; isn't that right?

A. That's right.

Q. Did you come to their house to visit them?

A. I did.

Q. Frequently?

A. I did.

Q. Now, will you describe to the Court and jury the type of apartment that Ethel and Julius lived in, in Knickerbocker Village?

A. Well——

The Court: When?

Q. From 1942 on?

A. It was——

Q. Let me clarify it for the Court. Is it not a fact, from your own knowledge, that Ethel and Julius lived in that same apartment in Knickerbocker Village from 1942 right down to and including the date of your arrest in June 1950?

A. That is correct.

Q. Now, will you describe to the Court and jury the kind of an apartment it was, in terms of number of rooms, kind of furniture and any other matters that you would care to describe about that apartment?

A. Well, as to the furniture, the furniture changed [fol. 798] from time to time; she bought extra pieces and stuff of that nature, so I don't recall all the different ways the furniture was set.

The Court: First tell us about the rooms?

A. (Continuing) The rooms themselves—the apartment was at the end of a long hall, on the 11th floor, in Knickerbocker Village, G-11 is the number.

Q. 10 Monroe Street?

A. 10 Monroe Street. You come through the door; there is a small foyer; you turn to the left. It opens up into a living room, much longer than it is wide, and on the right is a door at the entrance to the living-room—I should say, at the foyer to the right there is a door to the bathroom, and in this doorway there is a bathroom, and then through the doorway is a bedroom, and at the end of the living room, on a line with the wall, the wall where the windows are at, is a kitchen.

Q. All right, so that the apartment consisted of a living room, a bedroom, a kitchen and a bathroom?

A. That's right.

Q. Now, in connection with the kind of furniture that you saw in that apartment, did you notice or did you ever make any remark to Ethel or Julius about the fact that their furniture was secondhand furniture?

A. I never mentioned it to them, but I was in the pres-[fol. 799] ence of people who did.

Q. And from your own observation, could you tell this Court and jury whether or not the furniture in their apartment was secondhand furniture, in the main?

A. Some of it was new.

Q. And some of it was secondhand?

A. Some of it was secondhand.

Q. Did you ever know how much rental Julius and Ethel paid for that apartment?

A. I believe I knew, but it slipped my mind. I can't recall it, right now.

Q. Well, if I told you that for many years they paid $45. a month rental, would that refresh your recollection?

A. Yes, that is probably the number, the price.

Q. And, as a matter of fact, while you were in business with Julius, first in the G & R Engineering Company and later in the Pitt Machine Products Co., Inc., there was talk between you and Julius and Bernie about how you were going to get along and survive?

A. That's right.

Q. Isn't that right?

A. That's right.

Q. And in the course of that conversation, some talk was made about the various expenses that each of you had to pay, rent, food and so forth; is that right?

A. That is correct.

[fol. 800] Q. Now, does it refresh your recollection as to how much rental Julius and Ethel paid for that apartment at 10 Monroe Street?

The Court: He said he thought you were approximately right.

Mr. E. H. Bloch: All right.

Q. Do you feel any remorse now for what you did down at Los Alamos?

A. I do.

Q. Did you feel any remorse, or were you contrite or penitent at or subsequent to the time you did the things you said you did down at Los Alamos?

A. I was.

Q. Is there a change in the quality of your feeling of remorsefullness?

The Court: Oh, I will sustain that.

Q. Or has there been?

The Court: I will sustain that objection.

A. I don't understand what you mean.

The Court: Just listen to me. I have sustained the objection.

Mr. E. H. Bloch: I understand. I am not asking it.

Q. Did you feel more remorseful now than you did down at Los Alamos, with respect to the things you did?

The Court: I will sustain that objection.

Q. Did you have different degrees of remorse?

The Witness: Remorse is remorse.

[fol. 801] The Court: All right.

By Mr. E. H. Bloch:

Q. You had remorse at that time?

A. I did.

Q. That is right, and you are remorseful now?

A. That's right.

Q. Now, let's come back to the first time the FBI men came down to see you in June of 1950; was that the first time that you had been interviewed by any of the representatives of the FBI, with respect to your activities at Los Alamos?

A. No.

Q. When was the first time after your discharge from the Army that the FBI came around to talk to you about your activities at Los Alamos?

A. In 1950, February.

Q. Was that before or after there was any discussion, as you stated in your direct, about your getting out of the country?

A. I can't place it as to whether it was before or after.

Q. Where did these FBI representatives see or speak to you in February, 1950?

A. One man called me up on the phone and he said he would like to see me. He came to my house; he sat down at my table; I offered him a cup of coffee and we spoke—he did not say to me that he suspected me of espionage or anything else—he just spoke to me about whether I had [fol. 802] known anybody at Los Alamos, and that was the gist of the whole conversation. He walked out of the house maybe an hour later, and that is all there was to it.

Q. All right now, let's see. Did he introduce himself as a member of the FBI?

A. He did.

Q. Did he ask you any questions, either directly or indirectly, with respect to your knowledge of any illegal activity that occurred at Los Alamos while you were there?

A. I don't recall exactly what the whole conversation was about. It made very little effect on me, because it didn't—I mean, it didn't seem like anything—I mean——

The Court: Were you asked to sign any paper of any kind?

The Witness: No, not at all.

Q. You say you were together with that FBI man for an hour?

A. There was also my wife in the room and my little boy, and I think maybe a conversation might have gotten off on a couple of tangents.

Q. Well, at any rate, whether your wife and children was there, he stayed an hour, did he not?

A. Yes.

Q. Did he tell you what he came for?

A. Well, he wanted to know——

[fol. 803] Q. Did he tell you what he came for?

Mr. Cohn: He is trying to answer, your Honor.

Mr. E. H. Bloch: It is either a yes or no. I will follow it up.

The Court: Mr. Bloch is a very impatient young man and he wants his answer fast.

Mr. E. H. Bloch: Thanks for the compliment, for calling me young.

The Court: If you will just wait a little while you will get an answer.

A. (Continuing:) He discussed with me—when he came into the house it was very difficult to find out what he wanted. He didn't come out and say that he wanted some information. He just talked around the point. I didn't get what he really wanted to find out.

Q. Was Los Alamos discussed?

A. Oh, yes.

Q. Did he say he was looking for people who might have conducted illegal activity in Los Alamos?

A. No, he just wanted——

Q. He didn't say that?

A. No, he didn't say anything of that kind.

Q. What was the name of that FBI man?

A. I can't remember that FBI man's name.

Q. Did you ever see that FBI man since?

[fol. 804] A. I have not seen him since.

Q. Were you frightened at the time that FBI man came down to see you in February, 1950?

A. Well, I wasn't exactly calm.

Q. You were frightened, were you not?
A. Not very frightened, no.

Q. I want to ask you again, was Los Alamos mentioned at that first interview that you had with that FBI man in February, 1950?

The Court: He did say yes it was.

A. Yes.

Q. You didn't tell that FBI man at that time, that you had engaged in any illegal activity at Los Alamos, did you?

A. I didn't tell him, but I was pretty well on the verge to tell him.

Mr. E. H. Bloch: I move to strike out the latter part of the answer as not responsive.

The Court: No, it will stand.

Mr. E. H. Bloch: I respectfully except.

Q. Did you mention to him anything about the fact that you had given secrets of the Los Alamos project to any unauthorized person?

The Court: Don't answer that. He has already answered it.

Q. Did you mention the name of your sister Ethel [fol. 805] Rosenberg to that FBI man in February, 1950?

A. I don't believe I did.

By the Court:

Q. Was there any discussion about Ethel Rosenberg?

A. I don't think she came into the conversation.

Q. I believe you said you weren't asked anything about espionage, were you?

A. No.

Mr. E. H. Bloch: I respectfully except to your Honor's question, and I hesitate to ask the following questions because they are on the same line, and if the Court wants, I will make an offer of proof. I am going to ask him——

The Court: No, you go ahead.

Mr. E. H. Bloch: All right.

By Mr. E. H. Bloch:

Q. Was the name Julius Rosenberg mentioned by you at that interview with the FBI man in February, 1950?

A. I don't believe that there was. I don't remember the conversation that well.

Q. Was your wife's name mentioned?

A. She was sitting right there.

Q. In connection with any activity or an illegal sort, to that FBI man, in February 1950, by you?

A. Of course not. I didn't mention anything like that to the FBI man.

[fol. 806] Q. All right. Now then, when was the next time you were interviewed by the FBI?

The Court: And you say that you didn't make any written statement and you weren't asked to sign one?

The Witness: No, nothing, no.

Q. When was the next time you were interviewed by the FBI?

A. When I was arrested, June 15th.

Q. Now, you say that four FBI representatives came around to your house on or about June 15, 1950, at or about 2 o'clock in the afternoon; is that right?

A. That's right.

Q. And they stayed in your house until about 7:00 or 7:30 that evening?

A. That's right.

Q. And during that time they conducted a search of your house?

A. They did.

Q. And during that five or five and a half hour period they asked you questions, did they not?

A. They asked me some questions, yes.

Q. Did all of them ask you questions at some point or another?

Mr. Bloch: I will withdraw that.

A. Did all participate at some point or another in asking you questions during your five or five and a half hours interview?

A. Well, I don't remember them all standing around me and asking me questions. I just remember that once

[fol. 807] in a while one of them would ask me a question while they were doing their work.

Q. Now, when they first came in, do you remember who was the first FBI representative to speak?

A. Well, I believe it was John W. Lewis was the first one.

Q. And what did he say, the first words, when he came in?

A. I can't remember, probably "Hello" or "How are you"? Or "Is your name David Greenglass"?

Q. Aside from these preliminaries, what did he tell you about why they came?

A. He said they came—well, this isn't the first words they said. He said they came in connection with leak of information in the security of their—of the United States Government, and they would like to find out what I know about it.

Q. Was the name Harry Gold mentioned during that five or five and a half hour interview?

A. No.

Q. Not once? When was the first time that any United States representative brought in the name of Harry Gold?

A. He didn't bring in the name. He just told me of a man that came to see me.

Q. And did he mention where the man came to see you?

A. In Albuquerque.

Q. Did he mention the month he came to see you?

A. Yes, he did.

Q. Now, as a matter of fact, Mr. Greenglass, you had [fol. 808] read in the newspapers prior to June, 1950 about the arrest of Harry Gold, had you not?

A. I had.

Q. And when you read that information in the newspapers, did you recognize the person, who was mentioned as Harry Gold in the newspapers, as the person whom you transferred information at Albuquerque, New Mexico, in June, 1945?

A. I did not remember his face at the time.

Q. Now, you said that Harry Gold came to your apartment in Albuquerque, New Mexico one morning in the early part of June, 1945; is that correct?

A. That's right.

Q. Is that right?

A. That's right.

Q. Your wife was there?

The Court: I think you said it was a Sunday morning.

The Witness: He said "some morning in early part of June", O. K., it was Sunday morning.

Q. A Sunday morning?

A. Yes.

[fol. 809] Q. And then you told us about how there was an identification through the Jello box cut; is that correct?

A. That's right.

Q. Then you had a conversation with Harry Gold after that identification had been complete; is that correct?

A. That's right.

Q. Now, where did this conversation take place, in your living room?

A. Yes.

Q. About what time of the morning would you say it was?

A. About ten o'clock, I suppose; I can't place it accurately.

Q. How long did Harry Gold stay in your apartment that morning?

A. Not very long.

Q. About how long?

A. Altogether the whole meeting was about 20, 25 minutes, including the walk, so it couldn't be very long.

Q. At any rate, you were with him for 20 or 25 minutes that June Sunday morning in 1945, both in your apartment and outside in the street; is that right?

A. Yes.

Q. You had a very good chance to look at his face, didn't you?

A. Very good.

Q. You did look at his face?

A. I did.

Q. During that entire 20 or 25 minutes?

A. That is right.

[fol. 810] Q. Was there any attempt on his part, so far as you could observe at that time, to conceal his face?

A. No.

Q. It was sunlight, was it not?

A. A bright day.

Q. And Albuquerque usually is a very bright town, is it not?

A. Yes.

The Court: Don't go into all these details. He said he could have seen it and so forth. You can go on.

Q. Now, that afternoon you also saw Harry Gold, did you not?

A. I did.

Q. That was after you had written down certain information?

A. That's right.

Q. Then he came back and you gave it to him?

A. I did.

Q. That is the time he gave you the $500. in the envelope; is that right?

A. That is right.

Q. Did you have an opportunity to look at his face in the afternoon?

A. I did.

Q. Did you read any account in the newspaper concerning this Harry Gold prior to June 15, 1950, which led you to believe that the person with whom you had dealings was already apprehended and under arrest by the Government authorities?

A. I never would have noted from the newspapers. Julius Rosenberg came and told me that that was the man, and after that I read the newspapers, because I hadn't [fol. 811] seen him even when he came up and showed it to me.

Q. Now, you hadn't read the newspapers?

A. Until he had showed it to me.

Q. Until he came around, is that the idea?

A. That is right.

Q. Now, when did you say Julius Rosenberg came around to tell you about the fact that Harry Gold had been arrested?

A. It was in the morning.

Q. Do you remember when?

A. It was the day after my wife got out of the hospital with her baby.

Q. And when was that?

A. That is the way I place it. It can be found out. I just don't remember.

Q. Now look——

A. I can place it that way.

Q. Now look, your wife gave birth to a baby——

A. That's right.

Q. —June 16th; six days later she was out of the hospital. The next morning——

A. It was May 16th.

Q. Your child was born when?

A. May 16th.

Q. And how long did you- wife stay in the hospital after your child was born?

A. Six days.

Q. So that would bring us down to about May 22nd; is that correct?

A. And the next morning is when he brought the paper in.

Q. So you would say that that is about May 23rd?

[fol. 812] A. Right.

Q. And you had read nothing——

A. I read nothing.

Q. —in the Newspapers? Let me finish my question—you had read nothing in the newspapers prior to May 23, 1950, concerning the arrest of Harry Gold, or any accounts concerning his activities?

A. I had read nothing about it.

Mr. E. H. Bloch: All right, that is an answer.

Q. Now then, in this interrogation at your home on June 15, 1950, by these four FBI representatives, did you mention your wife as one of the people who conspired with you to commit illegal acts?

A. I mentioned no one at my home.

Q. You denied, did you not, at that time, to the FBI at your home, that you were guilty of any crime, or that you had engaged in any illegal activity?

A. I denied nothing. They didn't ask me direct questions and I gave answers to the questions they did ask.

Q. Well, let's hear, let's hear some of the questions that they asked and let's find out whether they were directed——

A. It was later at night.

Q. No, no. We will come to the night; we will come to the night. Let's stick to the afternoon for a little bit.

A. They wanted to know things, when I had been in the Army, where I had been.

[fol. 813] Q. Did you tell them?

A. I did.

Q. All right, what else?

A. What I was doing in the Army.

Q. Did you tell them?

A. I did. What I worked at, where I worked.

By the Court:

Q. Well, did you answer all the questions that were put to you, faithfully?

By Mr. E. H. Bloch:

Q. You didn't lie about a single question during that five and a half hour interval?

A. No. As a matter of fact, I volunteered information.

Q. Not one——

The Court: He didn't say it was a five and a half hour interview. He didn't say it was a five and a half hour interview. Be careful about that. He said he was only questioned for about an hour.

Mr. Bloch: But the interval was from two to 7:30.

The Court: I don't like the implication.

Mr. Bloch: I didn't mean to leave any implication, your Honor.

The Court: All right.

Q. They were there for five, five and a half hours?

A. That is right.

[fol. 814] Q. During part of that period they questioned you?

A. Yes, it was the type of questioning that was "Oh, by the way", while they were doing their work.

Q. Now, when they searched your apartment, did you realize that you were a suspect?

A. I would have to be awful dumb not to.

Q. Did you mention during that period any names of

people, that you mentioned in your direct testimony here in court?

A. I don't recall that I did, except that at one point they found this paper, Julius's notes from high school, and they asked me what it was.

Q. Is it from high school or college?

A. College, I mean. And they saw some math, and they said to me, "What is this? Is this some secret material"? I said, "No, that is notes that my brother-in-law did in—wrote about while he was in college."

Q. In other words, they asked you about some of the notes that Julius Rosenberg had made in college and specifically asked you whether or not that was secret material?

A. They didn't put it that way.

Q. That is, I am using your words.

A. They said, "What is this"? In other words, they wanted an explanation of what the paper was.

Q. Did you give them an explanation?

A. Yes, I told them what it was.

[fol. 815] Q. Did you, during that five or five and a half hour period, ask them to give you an opportunity to consult with counsel?

A. I didn't ask them, no.

Q. Did you ask your wife to try to get you counsel?

A. My wife was in the hospital.

Q. Did you call up anybody——

A. I did not.

Q. —whether it be a relative or a friend——

A. My——

Q. —to ask them to procure counsel for you?

A. No, I didn't.

Q. During that five and a half hour period?

A. I did not.

Q. Then, as I understand it, you were taken by these four FBI representatives down to the Federal building here?

A. That is right.

Q. Did you come down here by automobile?

A. That is correct.

Q. Whose automobile?

A. I suppose it belonged to the Federal Bureau of Investigation, I don't know.

Q. It was a private automobile, looked like a private automobile; is that right?

A. Well, it had a radio in it.

Q. All right. Finally you got down here. Where did you go when you got down to this building?

A. I went up to the FBI headquarters.

[fol. 816] Q. And what floor is that on?

A. It is in the 20s, I guess it is the 29th floor.

Q. 29th floor?

A. Yes.

Q. You have been up on the 29th floor on many occasions, haven't you?

A. Twice.

Q. Now, the first time was this time that we are talking about now. When was the next time?

A. Some weeks ago.

Q. Did these four FBI representatives go up to the 29th floor with you?

A. They did.

Q. Did you have dinner that night?

A. They let me eat my supper before I left.

Q. Would you mind talking a little louder, please?

A. I said, they let me eat my dinner before I left.

Q. Now, after you had your dinner at your home, about what time was it?

A. It was about four, five o'clock in the afternoon.

Q. Did you have anything further to eat that evening?

A. About—I guess, about nine, ten o'clock at night I had some more.

Q. Did any of the FBI representatives in your apartment make any notes or memoranda while you were talking?

A. I can't say for sure whether they did or didn't.

Q. Now, when you got down here to the Federal build-

[fol. 817] ing in the evening, did you notice whether in the course of the interview any of the FBI representatives made any notes or memoranda?

A. Yes.

Q. Was a stenographer present? When I say a stenographer, I include a stenotypist or anybody who will take

down words in a short-cut way. Was any stenographer present during that interview that evening with the FBI representatives?

A. When I told them I would give them a statement, then a stenographer came in.

Q. Now, what time did you tell them that you were going to give them a statement?

A. I don't know exactly what time it was.

Q. Did the room in which you were interviewed have a clock?

A. You have got me there. I don't know either.

Q. Let's see whether we can refresh your recollection. You said you had something to eat around nine or ten o'clock; is that right?

A. I suppose it must have been around that time.

[fol. 818] Q. Approximately?

A. I heard some——

Q. If you don't have a clock, we don't expect you to know.

A. No, there is a bell outside that rings certain chimes, I mean, I thought it was about 9 or 10 o'clock.

Q. That is your best understanding. Now, did you tell the FBI that you were going to give them a statement after you had had this repast, at about 9 or 10 o'clock?

A. I don't know when I gave them the statement, when I started to give the statement.

Q. No, when you said to them that you would give a statement?

A. You can't pinpoint me on when I said I was going to give a statement, because I don't remember those things.

Q. You don't remember that?

A. No.

Q. Were you frightened at the time?

A. No.

Q. Did you ask them to give you an opportunity to get counsel?

A. No.

Q. Did you make any attempt to get counsel?

A. Not until about 2 o'clock in the morning, 1, 2 o'clock in the morning.

By the Court:

Q. Did they tell you that you could have counsel?
A. Oh, yes.

By Mr. Bloch:

Q. Did any of those FBI representatives tell you that [fol. 819] you were under arrest?
A. No.
Q. In the course of your questioning, did you at any time ask them whether you were under arrest?
A. No, I didn't.
Mr. Bloch: I don't know whether I asked this, your Honor. My mind is a little fuzzy.
Q. Did you make any attempt to procure counsel that evening?
A. I don't believe so.
The Court: Did I understand you to say not until 1 or 2 that morning?
The Witness: That's right—well, you can consider that "evening".
Q. Well, outside of the time consumed in taking this repast, about 9 or 10 o'clock, would you say that you were continuously questioned by these FBI representatives, from the time you got down here, about 7 or 7:30, to the wee hours of the morning?
A. Some of the conversation was just window-dressing; it had nothing— it wasn't pertinent.

Mr. E. H. Bloch: I move to strike that out, your Honor.
The Court: No, it will stand.

By the Court:

Q. What do you mean by that?
A. I mean, the man asked me how I felt, "Do you want [fol. 820] a cigarette"? Things like that.

By Mr. E. H. Bloch:

Q. They were very affable, is that right, they were very polite?
A. That's right.

Q. Is that what you meant by "window-dressing"?

A. Also, that he would—I mean, that they would talk about other things, other than what was on hand.

Q. Did those interspersions about other things take very long?

A. Five, ten minutes some time.

Q. Now, outside of this five or ten minutes——

A. I said "sometimes". By that I mean that during the conversation it would be broken by these little——

Q. But it is fair to say that outside of these indulgences in the social amenities, you were continuously questioned from the time you came down here at 7 to 7:30 until the wee hours of the morning?

A. Well, if you can consider giving a statement, questioning, yes.

Q. That evening, did you at any time mention your wife's name to the FBI as being one of those who was engaged with you in this illegal work?

A. I did.

Q. And did you mention the name of your sister Ethel at that time?

A. I believe I did mention her name, yes.

Q. Are you sure?

A. I can't remember now what I gave in a statement [fol. 821] then. In subsequent statements, I have.

Q. No, no, we will come to subsequent statements. Now please try to concentrate and fasten your mind on this particular——

A. Since I haven't read that statement——

Q. —on this particular evening.

A. I haven't read that statement since and I certainly don't know exactly what I put into it.

By the Court:

Q. Well, did you conscientiously withhold any facts that night?

A. No, I did not conscientiously withhold those facts.

Q. And did you conscientiously tell substantially what you have told in court these past few days?

A. That I did, and in other statements, because I couldn't remember at once.

Q. Well, when you left that evening, was there any understanding that you would make a subsequent statement?

A. I suppose there was.

Q. I don't want to know whether you suppose.

A. Yes, there was an understanding to that effect. I said to them, "That is to the best of my knowledge at this time".

By Mr. E. H. Bloch:

Q. Now, let me ask you, so that there will be complete [fol. 822] clarification here, and I am confining myself solely to the particular evening of June 15th——

The Court: Yes, and I wish you would make a little haste with it, because I think you are taking much too long on this subject matter. I haven't interrupted you; I have let you go ahead. I think you ought to make more haste on it, because if you are going to take everyone of those incidents—and I think I know what you are leading up to—and you are going to go through it in that detail——

Mr. E. H. Bloch: I am not going to go through it in that detail insofar as subsequent statements are concerned, but I would like to know particularly about this first statement, the first few days after his apprehension and arrest.

The Court: Very well.

Q. Are you now stating that you did not withhold conscientiously and information concerning your illegal activities at Los Alamos and elsewhere to the FBI authorities on the evening of June 15, 1950, and the early hours of the morning of June 16, 1950?

A. That is substantially what I mean.

A. All right. Now, after you finished with the FBI representatives, you were taken away from this building, were you not?

A. That's right.

[fol. 823] Q. Now, what time were you taken away?

A. Oh, that was—it was 4 o'clock the following afternoon. It was 2 o'clock in the morning that we got through —I mean, so that we could sleep.

Q. Now, where did you sleep that night?

A. I slept in this building, in the nurse's quarters.

Q. Now, by 2 o'clock in the morning had you already given a statement to the FBI?

A. Yes, I had.

Q. Had you signed that statement?

A. Yes, I had.

Q. Had you signed that statement?

A. Surely.

Q. You did?

A. Yes.

Q. How long in all would you say it took to prepare that statement and have you sign it?

A. I remember remarking that the stenographer was an awful—the typist was an awful slow typist.

Q. And did the stenographer go to another room and type it, or did she type it right there and then did you sign it?

A. I remember her typing something in that room and typing in another room, too, I suppose.

Q. Well, was there one—more than one stenographer or typist?

A. I don't know—no, only one, I believe, just one.

Q. Let us see whether we understand. At any rate, you were asked questions; you gave certain answers; there were a stenographer and a typist there, and whatever [fol. 823a] you said was put down in writing, is that right, was put down in print?

A. It took quite a while, because I wrote it out in longhand.

Q. Oh, I wanted to get that. You wrote out a statement in your own handwriting?

A. That's right.

Q. Did you sign that statement?

A. I signed that statement.

[fol. 824] Q. And did the statement that you wrote out and signed in your own handwriting precede or come subsequent to the time when the stenographer came into the room?

A. I really don't know how she took it. I think maybe she read my notes and typed it off the notes.

Q. You are not sure of that?

-. I am not sure of that.

Q. At any rate, at 2 o'clock in the morning you were all through?

A. Yes.

Q. And you slept in this building?

-. That's right.

Q. Did you stay in this building the following day?

A. Up until I was arraigned and taken over to West Street.

Q. And when were you arraigned?

A. Do you mean the time? It was in the afternoon, I believe.

Q. And that was on June 16th,——

A. That is right.

Q. —1950. Was that down in the Commissioner's office in this building?

A. That's right.

Q. Did you have counsel at that time?

A. I did.

Q. Who was your counsel?

A. O. John Rogge.

Q. And was Mr. Rogge there personally?

A. He was.

Q. Had you seen any members of Mr. Rogge's firm prior [fol. 825] to the time that you saw Mr. Rogge on June 16, 1950?

A. I did.

Q. And who of Mr. Rogge's firm did you see?

A. Mr. Fabricant.

Q. And when did you see Mr. Fabricant?

A. It was in the morning of June 16th.

Q. About what time?

A. I suppose it was during business hours, between 9 and 12 sometime.

Q. Now, did you make a request for counsel at any time after you were taken down here to the Federal Building on June 15, 1950?

A. At about one o'clock or so somebody said to me, "You ought to get a counsel—you ought to get a lawyer".

Q. Was that after you had written out your statement and signed it?

A. Yes.

The Court: Let me ask you, were you advised before that you had the right to have a lawyer?

The Witness: Sure.

The Court: Were you advised of that fact when you were taken to the building for the first time?

The Witness: No.

The Court: When were you advised of that fact, before you made the statement or during or just when?

The Witness: Just about when I started to make the statement.

[fol. 826] Q. Now, when you started to make that statement you knew that Gold had put his finger on you, didn't you?

A. I don't get what you mean.

Q. Never heard that expression "put the finger on you"?

The Court: No, don't answer that.

Mr. E. H. Bloch: All right, I will withdraw it.

Q. During the course of your interrogation at the Federal Building here that evening on February 15, 1950, did any of the FBI representatives or any representatives of the United States Government tell you that Harry Gold had charged that you were conspiring with him or that you were a conspirator with him in committing espionage?

Mr. Cohn: Mr. Bloch said "February". I believe he meant "June".

The Court: He means June, that is correct.

Mr. E. H. Bloch: "June"—I am sorry, that is correct.

A. Nobody told me that.

Q. What?

A. Nobody told me that.

Q. You knew——

A. They said——

Q. Just a second. You knew when you came down here to the Federal Building on June 15, 1950 that Harry Gold was already under arrest?

A. I did.

Q. Now, in the course of your interrogation on the even-

[fol. 827] ing of February 15 of 1950—I am sorry——

The Court: June.

Q. —June 15, 1950 here, did you mention the name Harry Gold first or did somebody representing the Government mention the name Harry Gold first?

A. I don't recall that.

Q. But his name was mentioned?

A. I told—I can't even recall that.

Q. Did anybody tell you at that time that a complaint had either been made or was being made charging you with conspiring with Harry Gold to commit espionage?

A. Nobody.

Q. Now, the following morning you say Mr. Fabricant saw you?

A. He did.

Q. Did you call any relative on the evening of June 15th or in the early morning hours of June 16th from this building, telling him or them that you wanted counsel?

A. I did.

Q. And to whom did you speak?

A. I spoke to my brother-in-law, Louis Abel.

Q. Was that after the stenographer or typist had taken down what you responded to——

A. That was after I signed the statement.

Q. —the questions propounded to you by the FBI?

A. That was after I signed the statement.

[fol. 828] Q. Now, when you were arraigned before the Commissioner on June 16, 1950, in the afternoon, did you know then that you were accused by the United States Government of conspiring with Harry Gold to commit espionage?

A. Repeat that?

The Court: Read that, Mr. Stenographer.

Q. (Read.)

A. Nobody ever read it to me until I got in front of the magistrate.

Q. Now, when you got in front of the Commissioner down here in the basement of this building, did somebody read to you the complaint?

A. The District—the U. S. Attorney read the complaint. That is the first I heard of it.

Q. Did Mr. Fabricant of Mr. Rogge's office tell you what

the United States Government was charging you with on that day?

A. I——

Q. Pardon me?

A. I don't believe that I can remember that part of the conversation at all.

Q. Was the name Harry Gold mentioned in the conversation you had with your lawyer Mr. Fabricant on the morning of June 16, 1950?

A. I can't tell, and I don't remember.

Q. You don't remember?

A. No.

Q. And was Harry Gold's name mentioned to you by [fol. 829] Mr. Rogge when you saw Mr. Rogge later that day, at the time of the arraignment?

A. You are asking me about a period that was very confused for me, and it is a wonder that so much stayed with me about it.

Q. You don't remember that——

A. No, I don't remember that.

Q. —what happened in June, 1950?

A. No.

Q. But you do remember everything that your wife told you back on November 29th——

The Court: I will sustain the objection.

Q. —1944?

The Court: Don't answer that.

Mr. E. H. Bloch: I respectfully except.

The Court: You know it is argumentative, counselor.

Mr. E. H. Bloch: I am not at all sure of that, your Honor.

The Court: Well, I am sure of it and I don't want any further argument on it.

Mr. E. H. Bloch: You asked me a question, your Honor, and I tried to respond.

The Court: All right.

Q. At any rate, the Commissioner or Mr. Saypol or somebody before the Commissioner at that arraignment did have read to you or read to you the complaint?

[fol. 830] A. That is right.

Q. And that complaint charged you and Mr. Gold, did it

not, with conspiring to commit espionage in that you delivered to Harry Gold confidential information from the Los Alamos project and received a sum of money for it in the early part of June 1945?

A. I didn't pay much attention to what the complaint said and you can—I—I don't even believe I heard the words in the complaint.

Q. You didn't hear the words?

A. No.

Q. Were you excited at the time?

A. No, I was just dull.

Q. Were you dull because you didn't sleep very much the previous evening?

A. It could be one of the contributing factors.

Q. How about now; do you feel sharp?

A. Sharp enough.

Q. Yes.

Mr. E. H. Bloch: I wonder, if the Court please, if this might be a convenient place to stop?

The Court: Have you got much more to go, Mr. Bloch?

Mr. E. H. Bloch: I am afraid so.

The Court: Do you think perhaps if we give you a good [fol. 831] substantial lunch period you might shorten it?

Mr. E. H. Bloch: Maybe I will get sharp, too.

The Court: Well, with that in mind, I—I did not ask you whether you would get sharp.

Mr. E. H. Bloch: No.

The Court: I asked you whether you would shorten it.

Mr. E. H. Bloch: I will try.

The Court: We will recess for an hour and a half for lunch, Mr. Bloch, and that should give you an opportunity to go over your notes and see whether you can shorten it in any respect.

We will recess until 2:25.

(recess to 2:25 p. m.)

[fol. 832] AFTERNOON SESSION

DAVID GREENGLASS, resumed the stand.

(Conference at the bench.)

Mr. Saypol: We had a telephone call during the recess from Mrs. Greenglass's mother.

The Court: Mrs. Greenglass?

Mr. Saypol: Yes.

Mr. E. H. Bloch: Ruth Greenglass.

Mr. Saypol: Yes.

Mr. E. H. Bloch: Dave Greenglass——

Mr. Saypol: Ethel.

Mr. E. H. Bloch: And Ethel's mother.

Mr. Saypol: The defendant's mother, and she said something about desiring to visit her daughter but it had not been permitted and she would like to visit her. She went on to say that some of the relatives had made it impossible and she asked me whether I could arrange it. Obviously I don't arrange things like that. I am just reporting it so that counsel may be apprised of the telephone call.

Mr. A. Bloch: I happen to know something about it.

Mr. Saypol: She addressed herself further to this effect, Mr. Bloch: Would I address an inquiry to her, to her daughter, your client, and ask her whether she didn't want [fol. 833] to see her mother.

The Court: Well, I think that is something you gentlemen ought to take up privately.

Mr. A. Bloch: Yes. There was a misunderstanding there. Several weeks ago we had an appointment with both defendants to meet them in this building on a certain Thursday, I believe it was. Mrs. Rosenberg expected a visit from her mother on that day and she asked me to call up her mother and tell her not to come that particular day because she had to be at this building. She must have misunderstood me.

Mr. Saypol: Does she want to see her mother?

Mr. E. H. Bloch: Yes.

Mr. Saypol: All right. I will use my good offices and tell her to come here. Aside from that I don't want any part of it.

The Court: Mr. Kuntz, will you please be on time?

Mr. Kuntz: I have been here since two o'clock.

The Court: Well, during recess time we had to wait until somebody walked in representing Sobell. All right. Let us go.

[fol. 834] (The following in open court, in the presence and hearing of the jury:)

Cross-examination continued.

By Mr. E. H. Bloch:

Q. Now, Mr. Greenglass, let's come back for a moment to the night of June 15, 1950, and the early morning of June 16, 1950. How many statements did you sign that evening and the following morning?

A. I signed one statement that evening and the following morning, I mean in this period.

By the Court:

Q. You mean one each time or one?

A. It was one statement. There must have been some copies or something but it is the same statement.

Q. One statement was signed by you?

A. That is right.

By Mr. E. H. Bloch:

Q. And that was the one that you wrote out in your own handwriting; is that correct?

A. That is correct.

Q. Now, in that statement did you refer to the incident in Albuquerque, New Mexico, in the latter part of November, 1944, in which you had a conversation with your wife and in which she invited you to commit espionage?

A. I referred to it, yes. I also, in that statement, I gave a general outline of everything I was to say——

Mr. E. H. Bloch: Now, if the Court please——

[fol. 835] A. (Continuing) —and later statements. I just made that statement as I remembered it then, and any subsequent statements, I had more memory of what I had done and I filled in more.

Q. Now, I understand that, but please, Mr. Greenglass, we are trying to find out specifically just what you said to the FBI.

The Court: Yes, and I don't think you ought to go into such minute detail. Now, I thought we were going to have this long recess for the purpose of trying to shorten this a bit, but instead I notice you are going back again, going back over the thing more minutely than you did before.

Mr. Bloch: All right. I want to make myself clear to the Court. I know that the Court understands the purport of these questions. If I don't ask them in this form, then I may very well have waived my rights to lay the foundation for the introduction of certain documents.

The Court: Yes, but don't you think you are laboring the point, really?

Mr. Bloch: I honestly don't, your Honor. I feel in good conscience that it is my duty to ask these questions. Otherwise, I assure you that I wouldn't ask them. This is not [fol. 836] going to take long, your Honor.

By Mr. E. H. Bloch:

Q. Did you, in that statement of—we will call it June 15th or June 16th, it doesn't make any difference—down here in the Federal building, mention the incident where Julius Rosenberg is alleged to have come to your house a few days after your first furlough here in New York, in January, 1945, and asked for certain information, and you later that evening wrote out that information?

A. I did.

Q. You did mention that?

A. Yes.

[fol. 837] Q. And did you mention the fact that the following morning Julius Rosenberg came around and picked up that written information?

A. I don't remember if I did it or not.

Q. You don't remember. And did you mention in that first statement anything about being introduced by Rosenberg to a man on First Avenue, somewhere around January 8th or January 10th, 1945?

A. I didn't place the time but I did introduce—say I was introduced to a man.

Q. That answers it. And did you in that first statement detail either roughly or with precision the incident which allegedly occurred in the Rosenberg home in September, 1945 on your second furlough where your wife and Ethel, your sister-in-law, and Julius, your brother-in-law—your sister—were grammatically changing your verbiage of the report?

A. I did not make such a statement.

Q. And did you mention in your statement of June 15, 1950 or June 16, 1950 anything with relation to the Jello box incident?

A. I did.

Q. You did. And did you mention in your statement anything about the fact that sometime later—and here I am relying on my memory—whether it is 1946 or 1947 or 1948—at any rate, while you were in business with Julius, that you got an offer to go to college?

[fol. 838] A. I don't know if I made it in that statement or not.

Q. You are not sure of that?

The Court: You say in that statement, did you make it?

The Witness: I made it in subsequent statements, yes.

The Court: Is there anything that you testified to here today that you haven't made in the previous statement.

The Witness: There isn't, no.

Q. At any rate, you are not sure as to whether or not you mentioned this invitation to go to college——

A. In the first statement.

Q. I am only talking about the first statement now.

A. That is correct.

Q. Is that your answer, you don't remember?

A. I don't remember.

Q. Did you mention to the FBI that you got $500. from Gold out in Albuquerque in June, 1945?

A. I believe I mentioned money, yes.

Q. No—you mentioned money. Did you mention this specific sum of $500?

A. It is—I didn't remember the exact sum of money at the time.

Q. You knew on June 15, 1950, didn't you, precisely how much money you had gotten from Gold?

A. No, I didn't. I had forgotten it and it was just in [fol. 839] the subsequent times when I thought it over I remembered how much money it was.

Q. But before June 15, 1950 and during the intervening period from June, 1945—that is about five years—did you at any time know precisely how much Gold gave you in the early part of June, 1945?

A. At certain times a man's mind is funny. Sometimes I will remember it and sometimes I won't later on. There was no reason to recall it in that period.

Q. You weren't a rich man in June, 1945, were you?

A. I have never been a rich man.

Q. No, and $500. was a big sum to you, wasn't it?

A. Pretty big.

Q. And it enabled you and your wife to live and have some luxuries, didn't it?

A. It enabled us to live.

Q. All right. And you want to say now that you did not remember the precise sum of money that Gold gave you in the early part of June, 1945?

A. I did not remember the precise sum of money and——

Q. All right, that is an answer?

A. —later times I did remember it and I did put it down.

Q. Now, did you mention to the FBI about $200. being given to you by Rosenberg in September, 1945 in his apartment?

[fol. 840] A. I did not.

Q. And did you mention to the FBI on June 15th and 16th that you had received a thousand dollars from Rosenberg in February, 1950?

A. I did not say that at all.

Q. And did you mention to the FBI——

A. Because it was not February, 1950 that I received the thousand dollars.

Q. I beg your pardon—I am sorry, you are right. It was June, was it?

A. It was June—it was May, 1950 I received it.

Q. Did you mention anything about that thousand dollars?

A. I mentioned it, yes.

Q. That you got a thousand dollars from Rosenberg?
A. That is right.
Q. Did you mention it——
A. I did not. I don't believe it was in the statement but in subsequent statements it was there.
Q. No, please, Mr. Greenglass, let us understand each other.
A. You are saying——
Q. I am talking now solely and directing my inquiries exclusively to what you told the FBI on the evening of June 15, 1950 and what went into that statement.

Mr. Cohn: Your Honor——

A. Now I——

[fol. 841] Mr. Cohn: Just a minute, Mr. Greenglass. I see a difficulty right there. He said "what you told the FBI and what went into the statement". I don't think it has been established that everything he told the FBI did go into the statement. It usually doesn't.
Mr. E. H. Bloch: Mr. Cohn, I agree with you. If there is any unclarity about it in the record I want to clarify the record.

Q. Was there anything in your statement which you signed on the evening of June 15, 1950 here in the Federal Building about the receipt of $1000. from Rosenberg in the year 1950?
A. I don't believe it was in the statement, no.
Q. All right.
The Court: But you had told them about it?
The Witness: I had told them about it.
Q. And did you have incorporated in your statement or did you yourself incorporate in your statement anything about the receipt of $4000. from Rosenberg in this brown bag which is marked Government's Exhibit 10?
A. I—I had told them about this—what they put in the statement, what they wanted me to put into the statement, what they wanted me to put into the statement in the first thing, they told me was just to make a general statement, that is all.

[fol. 842] Q. Now, isn't it your testimony that you wrote out the statement?

A. That is right but it was getting quite late and I mean I am sure that I would have another opportunity to write more.

By the Court:

Q. Do you remember which agent told you just to make a general statement?

A. Well, it was just a general statement.

Q. I say, do you remember which agent told you to make a general statement?

A. I don't remember which one said to make a general statement. It was just a general statement. I said "Whatever I will remember more I will write as more"—I mean it was getting quite late at the time.

By Mr. E. H. Bloch:

Q. Well, at any rate, whether it was late or early is it your testimony now that the $4000. was not incorporated in your written statement of June 15, 1950?

A. I can't say that it was and I can't say that it wasn't. I don't remember if I did put it in or not.

Q. It may have been omitted?

A. It may have been put in, too.

Q. Now, is it your testimony that you mentioned the $4000. to the FBI representatives that evening?

A. I did and I will tell you how I know, that, because [fol. 843] when they searched the house they couldn't find it and I told them then later on that I had given it away.

Q. Now, did you tell them that evening to whom you had given that money?

A. I don't remember that either.

Q. Didn't one of the FBI representatives when you mentioned the $4000. ask you where the $4000. is?

A. He must have. I just don't remember saying anything to him about where it was.

Q. Well, at that time you had given the $4000., at least in terms of custody, to your brother-in-law, had you not?

A. I did.

Q. Did you want to conceal from the FBI the name of the person who was holding that money for you?

A. No, I wasn't concealing it.

Q. But you did, didn't you?

A. No, because when I called up my brother-in-law, Louis Abel, I told him I was calling my brother-in-law Louis Abel, to get in touch with a lawyer. I didn't conceal it from them at all.

Q. Did you tell them either directly or in the conversation that you had with your brother-in-law that evening from this building that your brother-in-law had $4000. of your money?

A. Well, I tell you, I don't remember actually telling him that or not. I probably did tell it to him. I am not [fol. 844] saying that I remember it or not.

Q. But you are not sure?

A. I am not sure that I did or I didn't.

Q. All right, that is an answer. Did you tell the FBI that evening anything about the gold watches and the console table that the Rosenberg's were alleged to have received from Russians?

A. Mr. Bloch,——

Q. Well now, if you don't remember——

A. I don't remember.

Q. Well then, say so. Then say so. I don't expect you to answer——

By the Court:

Q. Is that all you wanted to say, Mr. Greenglass?

A. No. I wanted to say more but he doesn't allow me to.

Q. Well, I think I am running this courtroom. What is it you want to say?

A. Well, what I wanted to say is all these little details was something I remembered as time went on. It was just a few hours that I was there and I put down what I remembered without trying to conceal a thing.

Q. It wasn't your intention at that time to give every minute detail?

A. Not intention but I couldn't remember every minute detail that had occur-ed.

[fol. 845] By Mr. E. H. Bloch:

Q. How many questions——

A. It is beyond human ability to do so.

Q. All right, let us see. You got to this building at about 7.00 or 7.30, didn't you?

The Court: Let us not review that whole story over again. I think we all have a slight bit of intelligence.

Mr. E. H. Bloch: All right.

The Court: We all know by now that he got here at 7.00 or 7.30.

Q. Now, did you disclose to the FBI directly——

Mr. E. H. Bloch: I withdraw that.

Q. That evening, did you ask any of the FBI representatives to go easy on your wife?

A. I did not say any such thing.

Q. Now, Mr. Greenglass, your wife has never been arrested, has she?

A. She has not.

Q. And she has never been indicted, has she?

A. She has not.

Q. And she has not pleaded guilty to any conspiracy to commit espionage, has she?

A. She has not.

Q. And your wife is at the present time home, taking care of your children; isn't that right?

A. That's right.

Q. Is that why you hired Mr. Rogge or Mr. Fabricant?

[fol. 846] A. I don't see where one question has to do with the other.

Q. I am asking you.

Mr. E. H. Bloch: I move that the answer be stricken out.

The Court: The answer is stricken out.

Answer his question.

A. I don't understand what you mean.

Mr. E. H. Bloch: Would you mind rereading the question.

The Court: Well, he doesn't understand your question. Maybe you can rephrase it for him.

Q. You wanted a lawyer, did you not?

A. That's right.

Q. And you wanted a lawyer, not before you signed a statement, but after you signed a statement; isn't that right?

A. I just—it just came up at that time that we were free to get a lawyer and I got a lawyer at that time.

Q. And you were free to get a lawyer, at least you felt free to get a lawyer at about 2 o'clock in the morning, after you had signed your statement, is that correct?

A. That's right.

Q. And then you made attempts to get a lawyer; isn't that right?

A. That's right.

[fol. 847] Q. You called up your brother-in-law and you told him, "Get a lawyer", didn't you?

A. That's right.

Q. Or words to that effect. Now, I am asking you whether or not, when you called up your brother-in-law to get a lawyer, you had in your mind that that lawyer should represent your wife?

A. To represent me.

Q. Only you?

A. When I say that, I don't know who else was involved, in the sense that I don't know what the Government was going to do. They were just talking to me.

Q. You involved your wife that night, did you not?

A. Well, I don't know sufficiently enough about the law to realize that I did involve my wife.

Q. Didn't you tell the FBI that night that your wife came out to Albuquerque?

A. That is absolutely true.

Q. And made an invitation to you to commit espionage; you told him that, did you not?

A. That's right.

Q. You also told them, did you not, that she had accompanied you to Rosenberg's house in September, 1945; you told them that, did you not?

A. That's right.

Q. You also told them that your wife had received from you the money that Gold had given to you in June, 1945; you told them that, did you not?

A. I did.

Q. Isn't that your testimony just within the last couple [fol. 848] of minutes?

A. That's right.

Q. All right, and you also told them——

The Court: Don't repeat it all.

Q. —that your wife——

The Court: Don't repeat it all, Mr. Bloch. We know.

Mr. E. H. Bloch: All right, just the last question on this line. I think I will be all inclusive then.

Q. And you also told the FBI, did you not, that night that your wife got one half of that side of the Jello box after arrangements had been made for her to go out to Denver and to meet somebody, as a means of identification?

A. What is that?

Mr. E. H. Bloch: I withdraw the question.

Q. Did you tell the FBI about your wife's participation in the Jello box incident?

A. I did.

Q. All right.

A. But let me point out, as a lawyer—as I wasn't a lawyer, I didn't know it was an overt act or anything else. How was I to know that? I just told them the story as it happened. That was all I was interested in getting out.

Q. You were interested in getting out?

A. I said, all I was interested in was getting out the story. Don't misconstrue my words.

[fol. 849] Q. Did you at any time think of your wife while you were down here telling your story to the FBI?

A. Of course I thought of her.

The Court: Did he think of her in what respect? He must have; he mentioned her name.

Q. Did you think of your wife with respect to the fact that she may be a defendant——

A. I did.

Q. —in a criminal proceeding?

A. I did.

Q. And was that at least one of the factors which motivated you in getting a lawyer?

A. It didn't motivate me to get a lawyer. At that time I didn't even think about it.

The Court: Supposing you tell us why did you get a lawyer.

The Witness: I got a lawyer to represent me in court, that is all.

By Mr. E. H. Bloch:

Q. Represent you in court?

A. That's right.

Q. As a matter of fact, when you were finally arraigned the following afternoon and after you had spoken to Mr. Fabricant in the morning and to Mr. Rogge at or about the time of the arraignment, did Mr. Rogge ask for low bail for you?

A. Yes, he did.

The Court: May I ask what is the relevancy of whether he asked for low bail?

[fol. 850] Mr. E. H. Bloch: I will come to it in just a moment.

Mr. Cohn: I don't know what that has to do with this.

Mr. E. H. Bloch: I am going to come to it right now.

Q. Didn't you tell your lawyer to fight this case for you?

A. I did not.

Q. Now, after you were arraigned, were you then taken to a jail?

A. I was.

Q. And were you taken to the Federal House of Detention?

A. I was.

Q. At West Street and West 11th Street, Manhattan?

A. I was.

Q. What time did you get there?

A. It was in the afternoon.

Q. Were you put in solitary confinement?

A. I was.

Q. How long did you remain in solitary confinement?

A. About three days.

Q. And you were restricted, were you not, in your movements there, to your cell?

A. Yes.

Q. And you weren't permitted during those three days any of the privileges that you subsequently found other prisoners had, with respect to walking on the roof and other [fol. 851] recreational facilities that were made available to them?

A. That's right.

Q. Now, during those three days, did you have any visitors?

A. No.

Q. Did you ask anybody for permission to receive visitors?

A. I don't believe I did. The reason I was confined to those three days——

Mr. E. H. Bloch: Now, I move to strike out any gratuitous remarks of the witness.

The Court: I will let him give the reason.

Mr. E. H. Bloch: I respectfully except, your Honor.

A. (Continuing) The reason, I tried to find out, was because there was an erroneous story in the newspapers to the effect that I was going to commit suicide, which was far from the truth; so the keeper, who read the story, felt, well, he wasn't going to take it on himself, so he had me put in solitary and had my laces taken off my shoes and my belt taken away from me so I couldn't commit suicide. That was the whole story. There was no other reason.

Q. Did you tell anybody that you were going to commit suicide?

A. No.

Q. Now, when for the first time did you have a visitor after you were taken to the Federal House of Detention?

A. I don't know exactly. I had a visitor.

[fol. 852] The Court: May I ask what the relevancy of this is?

Mr. E. H. Bloch: Yes. If you want me to state it in front of the jury, I will, but I think I ought to state it in front of the bench.

The Court: Come up.

(The following took place at the bench, outside the hearing of the jury:)

Mr. E. H. Bloch: The relevancy of this line of testimony, your Honor, is to show that this witness lied in order—I am trying to show that this witness is lying, in order to save his wife.

The Court: I assumed that.

Mr. E. H. Bloch: All right, and that I am now casting doubt upon whether or not he told substantially the truth to the FBI the evening he was brought down here.

The Court: What has that got to do with the visitors?

Mr. E. H. Bloch: In the light of the treatment accorded to him by the prison authorities and in the light of the subsequent change of treatment, I think it impinges, your Honor——

The Court: You are going to open the door now, I am warning you.

[fol. 853] Off the record.

(Further discussion off the record.)

(The following proceedings were resumed in the hearing and presence of the jury.)

By Mr. E. H. Bloch:

Q. Mr. Greenglass, did you hire Mr. Rogge's firm to defend you against the accusation that was made against you by the United States Government as reflected by the complaint before the Commissioner on June 16th, 1950?

A. I hired Mr. Rogge.

Q. Is that your best answer?

A. That is my best answer.

The Court: But did you hire him to defend you or did you hire him to represent you?

The Witness: Well, that is what I was worrying about his question. I said I hired Mr. Rogge.

Q. Now after these three days in solitary were you finally taken out and put into a cell with other prisoners?

A. I was.

Q. And you were treated just the way all other prisoners were treated?

A. That is right, I was.

Q. Is that right?

A. That is right.

Q. When was the first time that you left the Federal House of Detention after you were first brought there?

A. When they arrested Julius Rosenberg, the next day [fol. 854] I was taken out. It was over a weekend, so Monday I was taken out.

Q. Do you know when he was arrested?

A. I don't remember the date.

Q. Was it about a month after you were arrested?

A. That's right.

Q. Now, when you were down here in the Federal Building on your arraignment on June 16, 1950 were you aware of the fact that Julius Rosenberg that day was down in this building being interrogated by FBI representatives?

A. I was not aware of the fact.

Q. When did you find out about that?

A. I didn't. I wasn't aware of that fact.

Q. You still don't know it?

A. I mean I know it now.

Q. No. I mean up to the time I directed your attention to that?

A. I don't understand you.

Q. Well, is this the first time that you are hearing that Julius Rosenberg was being interrogated by FBI agents in the Federal Building on June 16, 1950?

A. Well, the FBI agents had never told me that they did.

Q. They didn't tell you. You didn't speak to Julius Rosenberg in this Federal Building on July 16, 1950?

A. July 16th?

Q. I am sorry, June 16th.

[fol. 855] A. Speak to Julius Rosenberg? No.

Q. Did you see him in this building on that day?

A. I don't believe I did.

Q. Did anybody ever tell you up to that time that I am now directing the subject to your attention, that Julius Rosenberg was in this building on June 16, 1950 and after

a number of hours of interrogation he was permitted to go home?

A. Mr. Bloch, I will say that somebody told me that Julius had been interrogated but he wasn't told as to the date—I wasn't told the date or when that interrogation occurred but my mother did tell me that on a visit.

Q. And that was within a few days after you were arrested, is that right?

A. Well, I don't know when she told it to me.

Q. You don't remember?

A. I do not remember when she told it to me.

Q. All right. Now while you were in the Federal House of Detention and after you had been released from solitary confinement did you tell any of the prisoners there that you were going to fight this case against you?

A. I had been told by my lawyer to just act like they act and "Don't make any trouble for yourself".

Mr. E. H. Bloch: I move that the answer be stricken out as not responsive.

[fol. 856] Mr. Cohn: I object to it being stricken.

The Court: I will let it stand.

Q. (Continuing) So I——

——.——.

Q. Did you——

A. ——whatever they said, I agreed with them.

Q. Did you on your own initiative——

A. I never on my own initiative.

Q. ——tell them or any of them that you were going to fight this charge against you?

A. I never told them that on my own initiative.

The Court: Well, you had already confessed, hadn't you?

The Witness: Certainly, certainly, but you see the idea was it made it uncomfortable——

The Court: Don't tell me about any ideas.

Q. Now, when was the first time that you left the Federal House of Detention to come down to this building after you were first lodged there?

A. I don't know—a week or so, maybe less. I don't know the exact times.

[fol. 857] Q. About a week? Would that be a fair statement?

A. Well, I won't even say that because I don't remember when I came back here.

Q. At any rate, there came a time when you were taken out of the Federal House of Detention and brought down to this Federal Building?

A. That is right.

Q. Were you examined by any of the representatives of the Government at that time?

A. I was.

Q. Was your lawyer present?

A. He had been present at some other times——

Q. I am talking about this time. Try to fasten your mind on the specific date or incident and I think we will get along here.

A. How can I fasten my mind on a specific date or incident? Are you saying when I came down I was interviewed by anybody? Yes, I was.

Q. And was your lawyer present at the time?

A. There were other times my lawyer was present. I don't remember whether it was the third time, fourth time or the fifteenth time.

Q. If you don't remember, say so. Nobody is going to take your head off. Your best answer is that you don't remember whether your lawyer was present the first time you were brought down here?

A. That is right.

Q. After you were taken from the Federal House of [fol. 858] Detention, is that right?

A. That is right.

Q. When did you get down here that day?

A. I don't even remember the day.

Q. And how long were you here?

A. If I don't remember the day I am certainly not going to remember how long I was here.

Q. Do you remember what you talked about to the FBI?

A. When I came down to talk to the FBI I talked about a number of things; whatever their interrogation led to,

it loosened the springs of my memory and I was able to remember things I had forgotten.

Q. Was a stenographer present?

A. Usually I talked to them and they write it down in longhand.

Q. Did you sign a statement that day?

A. I don't remember if I signed a statement that day, but I signed statements, plenty of statements.

Q. From that first time when you were taken from the Federal House of Detention to come down to the Federal Building here, how many times in all did you come down from the Federal House of Detention to this building to be interviewed by various representatives of the Government?

A. I don't know.

Q. How long were you in all lodged in the Federal House of Detention?

A. About a month.

Q. And were you then transferred to another prison?

[fol. 859] A. I was.

Q. Were you transferred to the Tombs?

A. I was transferred to the Tombs.

Q. And have you been lodged at the Tombs since that time?

A. I have been.

Q. Have you seen your wife while you were lodged either in the Federal House of Detention or in the Tombs at any place outside of those two penal institutions?

A. What was that again?

Q. Did you ever see your wife since your arrest at some place outside the West Street Jail or the Tombs?

A. I have.

Q. Where did you see her?

A. I saw her at the Federal Building here.

Q. Did you also see your children here?

A. I did.

Q. Did you get a special room to see her?

A. The same room that Sobell used when his wife and child came to see him.

Q. And where was that?

A. Right here in the Marshal's chambers.

Q. You mean downstairs?

A. Downstairs.
Q. In the jail?
A. In the jail.
Q. And did you discuss with your wife the testimony that you were going to give on this trial?
A. I have been instructed originally not to discuss tes-[fol. 860] timony with my wife or any other person and I did not.
Q. You did not? Not one word?
A. Not a word.
Q. How many times in all would you say you saw your wife since your arrest?
A. As many times as the Tombs would permit.
Q. Now let us be a little more specific. Give us your best estimate of the number of times?

By the Court:

Q. By that you mean that she came on the regular visiting days?
A. On the regular visiting days.
Q. There were no special days arranged?
A. No.
Q. For her visit?
A. No.

By Mr. E. H. Bloch:

Q. You have never been out of the confines of a jail since your arrest, have you?
A. Except to come to the Federal Building.
Q. This is still jail; you were always in the custody of the Marshal, weren't you?
A. That is right.
Q. Now, has your wife been receiving any money from the Government of the United States?
A. No.
Q. Have you received any money?
A. No.
Q. Is your wife working?
A. No.
Q. Do you know whether she is on relief?
A. She is not on relief.

Q. How old are your children?

[fol. 861] A. One is four and one is nine months.

Q. How old are Ethel's children?

A. One is seven and one is three or four—three.

Q. Can you estimate even roughly how many written statements you have given to the authorities?

A. I would say about six or seven—what do you mean by written? I mean it may not have been written.

Q. Well let us clarify it. How many statements have you given to the FBI or any other of the Government agents or officials where you actually signed your name at the end of certain printed matter?

A. I would say about six or seven.

Q. And how many times in all if you can give a rough estimate besides those six or seven occasions were you questioned where a stenographer was present?

A. I don't remember any stenographer.

Q. Would you say then that all in all you gave only six or seven statements which would include the taking either by notes or otherwise of what you were saying?

A. Mr. Bloch, you will have to clarify that.

Q. All right, I want to clarify it because I want to clarify it for everybody. There were occasions were there not when a stenographer was present when you were asked certain questions.

A. At times there were, yes.

Q. Now, at those times did you sign written statements?

[fol. 862] A. I don't think so.

Q. In other words, besides the six or seven written statements there were other occasions when you were asked questions and a stenographer took down the questions and your answers?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. How many times in all would you say there was a stenographer present at which you were asked questions and answers and they were taken down and transcribed?

A. I couldn't give you an estimate.

Q. More than one?

A. More than one what? The time——

Q. More than one occasion when that happened?

A. Yes, I suppose so.

Q. More than five?

A. You got me. I really—I can't give you an estimate of times on things like that.

Q. When did you first testify before a grand jury sitting in this court—I withdraw that, if I may, your Honor. You know, do you not, that you have been indicted as a defendant in a criminal proceeding brought by the Government of the United States sitting in a District Court of the United States for the District of New Mexico charging you with the crime of conspiracy to commit espionage?

Mr. Cohn: Your Honor, I think Mr. Bloch is going to [fol. 863] start going into matters which involve legal technicalities or which have no relevancy to the issues here. I think it is improper cross-examination. If he wants to go to the bench I will be glad to do that.

Mr. E. H. Bloch: Certainly.

(The following proceedings took place at the bench, outside the hearing of the jury.)

Mr. E. H. Bloch: Standing in and of itself I admit that it is absolutely improper but the purpose of this question is to show, and I am going to connect it, the fact that this witness has never been sentenced, that this indictment is still hanging over his head.

The Court: This indictment here?

Mr. E. H. Bloch: No. This is another indictment, a New Mexico indictment which is still hanging over his head.

Mr. Cohn: You can do better than that, Mr. Bloch. There have been superseding indictments and everything else. There is one indictment which is now on the calendar for trial. The others have been marked off. If you start going into the New Mexico indictment—there was an indictment, a superseding indictment naming another defendant. There was a superseding indictment naming somebody else. So far as bringing out the fact that he is awaiting sentence——

[fol. 864] The Court: Why don't you do it this way: There is another charge pending against you in New Mexico.

Mr. E. H. Bloch: To which you haven't pleaded.
The Court: To which you haven't pleaded.
Mr. E. H. Bloch: All right. That is all I want.
Mr. Cohn: It is not an identical charge. He is charged in New Mexico for removal purposes.
Mr. Lane: It is a substantive count in New Mexico.
Mr. Saypol: Nothing but a link in the chain of events.
The Court: Ask him, there is another indictment in New Mexico to which you haven't pleaded.
Mr. E. H. Bloch: Yes, that is all. That is the only purpose.

(The following proceedings took place in open court, in the hearing of the jury.)

Mr. E. H. Bloch: I withdraw the last question.

Q. In addition to the charge which has been brought against you here and which is the basis for this trial and the issues in this trial, is there another charge pending against you in the United States District Court for the District of New Mexico to which you haven't pleaded and [fol. 865] which still is unresolved?
A. Is this within my compass to know this? I mean I don't think I even know it.
The Court: Now don't ask any questions. He asked you a question.
The Witness: But I don't know.
The Court: If you don't know say you don't know.
The Witness: I don't know.

Q. You don't know about that? You pleaded guilty to this charge which forms the subject matter of this trial, did you not?
A. That is right.
Q. You are a defendant?
A. I am.
Q. When did you plead guilty?

By the Court:

Q. Do you remember the date?
A. No, I can't remember the date.
Q. Why don't you just say that if you don't remember it.

By Mr. E. H. Bloch:

Q. You pleaded guilty did you not in this building to this charge?

A. I did.

Q. And would it refresh your recollection if I told you that you pleaded guilty in Room 318?

A. Yes.

Q. And would it refresh your recollection if I told you [fol. 866] that your lawyer was present at the time you pleaded guilty?

A. That is right.

Q. How many months ago——

Mr. Saypol: Just a minute. What is happening here? Is his recollection being refreshed or is he testifying. The form of the question was such that the witness can't give a clear answer. What transpired is a matter of record.

Mr. E. H. Bloch: All right.

The Court: Proceed.

Q. Now, does that refresh your recollection as to the date when you pleaded guilty?

A. I pleaded guilty to the charge.

Q. Was that many, many months ago?

A. I pleaded guilty to an indictment earlier and I pleaded guilty to this indictment. I withdrew the plea on the earlier indictment at the same time.

The Court: This is a superseding indictment.

Mr. E. H. Bloch: In other words, this is a superseding indictment.

The Court: Yes.

Q. Now, how many months ago did you first plead guilty to this charge of conspiracy to commit espionage? Do you remember that?

A. Back in last year.

[fol. 867] Q. Last year. Have you been sentenced?

A. I have not been sentenced.

Q. Do you believe that by giving testimony in this case that you will be helped in terms of the severity of the sentence to be imposed upon you by the Court?

A. The Court—it is entirely within the discretion of the Court to give sentence, and whatever I do is just—it depends on the Court and nothing else by the Court.

Q. Now I would be—I would ask you to be good enough to answer my question. Do you believe that the Court will be easier on you——

Mr. Cohn: Your Honor, I object.

Q. —because you are testifying here——

Mr. Cohn: Your Honor, I object.

Q. —the way you did?

Mr. Cohn: I object to the question as to form, the witness's belief.

The Court: I believe that what he is trying to get at is a motive for his testimony.

Mr. Cohn: Yes. I have no objection to a proper question.

The Court: So I will permit him to ask the question.

A. I don't believe that I in testifying will help myself [fol. 868] to that great an extent.

Q. When you say "to that great extent", would you like to clarify that for the jury?

A. To any great extent.

Q. Would you say to any extent?

A. To any extent.

Q. All right. Do you believe that by testifying here in this trial that you will help your wife?

A. I don't know what the Government has in mind with my wife and I can't answer for them.

Q. You know, of course, that so far nothing has happened to your wife in terms of any criminal proceeding——

The Court: That has been answered.

Mr. Cohn: It has been answered.

Q. —or brought against her?

The Court: You don't have to answer that.

Mr. E. H. Bloch: I respectfully except.

Q. Let me ask you, Mr. Greenglass, did you ever keep a memorandum book or diary?

A. No, I never did.

Q. So that when you testified here today and yesterday and the day before yesterday, you were relying upon your memory, is that right?

A. Upon my memory, yes.

Q. And solely upon your memory?

A. That's right.

Q. And when you drew the sketches—one of them I [fol. 869] believe in June, 1950 and the other two a day or two before you testified—and I think they are reflected and marked Government's Exhibits 2, 6 and 7—did you rely solely on your memory in making those sketches?

A. I did.

Q. Now, when was the last day that you worked at the Los Alamos project?

A. 1946, February.

Q. What month?

A. February.

Q. That was about four and a half years ago?

A. That's right.

Q. And you relied solely upon your memory?

A. I did.

Q. During all of your months in jail did anybody go over with you any subject matter which related directly to those sketches that were introduced in evidence here as Government's Exhibits 2, 6 and 7?

Mr. Cohn: I don't know what Mr. Bloch means "go over with you". I think if he would clarify that——

The Court: Try to clarify it for him.

Q. Did you draw any sketches for any of the FBI men or any agents of Mr. Saypol's staff prior to the time you came to testify here?

A. I did.

Q. Was that the one that has been marked Government's Exhibit 2?

A. No.

Q. How many sketches did you draw for them?

[fol. 870] A. They were the same sketches, the only thing I used the ruler to accomplish this. The others were free-hand.

Q. Freehand?

A. That's all.

Q. Now, were you given any reference books or textbooks while you were in jail since your arrest, relating to any scientific matter?

A. No. I didn't—nobody gave me any.

Q. Did you read any scientific books while you have been in jail?

A. Just science fiction.

Q. That is, of course, not a basic theoretical journal, is it?

A. No.

Q. That is a popular kind of scientific periodical?

A. That's right.

Q. Now, Mr. Greenglass, I believe you testified that you graduated from high school here in New York City?

A. Yes.

Q. And I think you testified that you went to Brooklyn Polytech?

A. Right.

Q. Is that correct?

A. Yes.

Q. How long did you go to Brooklyn Polytech?

A. Six months.

Q. And how many courses did you take during those six months?

A. About eight different courses.

Q. And did you fail——

[fol. 871] Mr. Cohn: Oh, I object to that, your Honor. What difference does it make?

Mr. E. H. Bloch: I am coming to a new subject now, your Honor.

The Court: I assume you are.

Mr. E. H. Bloch: Yes, and I wish you will bear with me, because I am going to connect this up.

The Court: All right.

Mr. Cohn: Well, I will let Mr. Bloch finish his question. That is as far as I will commit myself at the moment, your Honor.

The Court: Right.

Q. Did you fail in your subjects?

Mr. Cohn: I would now object to that, your Honor. I don't see the relevancy of whether he or anybody else failed in subjects might have and it is certainly not proper cross-examination.

The Court: Before you answer that question, let me ask you: These sketches that are in evidence, are they the product of your own mind? By that I mean, were you helped by anybody on the outside in drawing those sketches?

The Witness: Nobody else, just myself.

The Court: Did anybody tell you to change any line here or change any line there?

[fol. 872] The Witness: Nobody told me anything like that.

The Court: Very well.

Now, you ask your question.

Mr. E. H. Bloch: Are you permitting it, your Honor?

The Court: Yes. What subject? Be specific.

Mr. E. H. Bloch: All right.

The Witness: I will tell the story.

Mr. E. H. Bloch: Look, Mr. Greenglass——

The Witness: I was quite young at the time, about 18, and I liked to play around more than I liked to go to school, so I cut classes almost the whole term. Simple.

Q. How many of the eight courses that you took did you fail?

A. I failed them all.

Q. And did you then go to Pratt Institute?

A. That's right.

Q. How long did you attend Pratt Institute?

A. I attended it for one semester and a half, and the half of the other semester I had to work at night, so I had to withdraw from my classes which was allowed by the school, and I went to work at night, and I did not fail those courses. As a matter of fact, I got good marks.

[fol. 873] Mr. E. H. Bloch: Congratulations.

The Court: Strike that from the record.

Q. Did you ever get a degree in science?

A. I did not get a degree.

Q. Did you ever get a B.S.?

A. I did not.

Q. Did you ever get an engineering degree?

A. I did not.

Q. From any recognized institution?

A. I did not.

Q. Have you pursued any other organized and formal courses, held under the auspices of a recognized educational institution, apart from the Brooklyn Polytech and the Pratt Institute courses that you have mentioned you took?

A. I did not.

Q. Do you know anything about the basic theory of atomic energy?

A. I know something about it, yes. I am no scientific—I am no scientific expert, but I know something about it.

Q. Did you ever take courses in calculus?

A. No.

Q. Differential calculus?

A. I did not.

Mr. E. H. Bloch: I am just looking for a piece of paper, your Honor.

Q. Or thermodynamics?

A. I did not.

Q. Or nuclear physics?

A. I did not.

Q. Or atomic physics?

A. I did not.

[fol. 874] Q. Or quantum mechanics?

A. I did not.

Q. Or advanced calculus?

A. I did not.

The Court: What is this all about? I haven't heard anybody——

Mr. Bloch: Why, if the Court please——

The Court: I haven't heard anybody testify to your complete list. I have heard some of those words used by Dr. Koski, but I haven't heard the rest of that.

Mr. E. H. Bloch: That is right, and the purpose of these questions is to cast—let me put it this way: The purpose

of these questions is to cast *out* upon the probability that this defendant, this witness, could have explained in his descriptions, as he said to Rosenberg and to others, the workings——

The Court: Very well, I have your answer. The charge here is not that he gave him everything that might have been accurate in every minute detail, but that he transferred secret material pertaining to National Defense.

Mr. E. H. Bloch: That is correct.

The Court: And whether he might have turned something over, miscalculating a figure or making an error here and there, is not material to the charge, Mr. Bloch.

Mr. E. H. Bloch: Except this, your Honor, that it goes [fol. 875] to his credibility. I agree with your Honor fully on the basic theoretical legal approach with respect to the charge, but I am asking these questions to impeach this witness's credibility.

The Court: How long is your list? I will permit you to go on.

Mr. E. H. Bloch: It is practically over.

The Court: All right, go ahead.

Mr. E. H. Bloch: And I might say I never took any of these courses.

Q. Have you read any basic works on any of the subjects that I have just asked you about?

A. No.

Q. Do you know what an isotope is?

A. I do.

Q. What is it?

A. An isotope is an element having the same atomic structure, but having a different atomic weight.

Q. Now, did you learn that in Los Alamos?

A. I picked it up here and there.

Q. When you came to Los Alamos, you were a machinist, were you not?

A. I was.

Q. What was your rating in the Army?

A. T/5.

Q. Had you, prior to the time you came to Los Alamos, done any work as a machinist in the Army of the United States?

A. I had.

Q. Where?

A. At a number of places.

[fol. 876] Q. Well, do you mind detailing them, and the length of time that you practiced the trade of machinist in the Army of the United States, prior to the time you got to Los Alamos?

A. I was a machinist at Fort Ord.

Q. For how long?

A. As long as the company was there, I was a machinist there.

Q. For how long was that?

A. Three months. I was a machinist at Southgate, California, in the General Motors Tank Arsenal.

Q. How long?

A. As long as the company was there, I was a machinist there.

Q. How long was that?

A. A period of four weeks.

Q. That is four months so far, right?

A. I was at the P. O. M., Pomona Ordinance Base, three months there; I was at Aberdeen Proving Grounds, three months there.

Q. That is seven; that is ten.

A. Okay, that is ten right there in the Army.

Q. All right.

A. And every other post that ever worked on, was in, in the Army, I worked as a machinist.

Q. Were you classified in the Army as a machinist?

A. I was classified—I had two classifications.

Q. I am talking about the first one, before your promotions.

A. Before my promotions? I was classified—when you originally come into the Army you have just a basic classification, which means you have taken basic training. After [fol. 877] that you have certain skilled classifications. I had two skilled classifications.

Q. What were they?

A. One was automotive machinist and one was machinist and toolmaker.

Q. And when you got to Los Alamos, were you an automotive machinist or a machinist?

A. A machinist.

Q. And you say that you first worked in a certain building called the "C" building—"E" building, I am sorry?

A. "E" building.

Q. Now, how many machinists besides you were in that building?

A. At the time, about four, five, maybe six.

The Court: Is this a convenient place to break off an recess?

Mr. E. H. Bloch: I think so.

The Court: All right, we will take our recess. May I see counsel, please.

(Discussion at the bench off the record.)

(Short recess.)

[fol. 878] Q. I believe, Mr. Greenglass, that before recess we were discussing your job as a machinist in the Army. Now at the E Building, how many other machinists were there besides you?

A. There was about four or five or maybe even six.

Q. And did they run up to as high as ten at times?

A. That's right.

Q. And you had an immediate supervisor, did you not?

A. I did.

Q. And his name was what?

A. His name was Demars.

Q. And his name was what?

A. His name was Demars.

Q. And besides Demars there was Sergeant Fitzpatrick?

A. That is right.

Q. And above Sergeant Fitzpatrick there was Dr.——

A. Kistiakowski.

Q. Is he the gentleman who testified here?

A. He is not.

Q. Now, when the E Shop moved into the Theta Building did the workers in the E shop remain as a departmental unit or were you joined or did you join with other machinists?

A. No, it was the same shop.

Q. Were there any other machine shops in the Theta Building?

A. No other machine shops in the Theta Building.

Q. Now when you were in the E Building the only persons or employees who were working in that building were the five or six or ten mechanics, machinists with [fol. 879] their supervisors, is that right?

A. That is right——

Q. Now, how about——

A. —in working in the buliding or in the shop? You said "building".

Q. Were there other employees working in the E Building?

A. Yes.

Q. How many others?

A. I can't tell exactly. There was laboratories all over the building.

Q. And how about when you moved into the Theta Building?

A. There were other employees working there, too.

Q. Was the Theta Building a bigger building than the E Building?

A. Well, there was more room for our group in it. It wasn't bigger.

Q. You mean it wasn't bigger physically?

A. It wasn't bigger physically.

Q. Were there more employees working in the Theta Building than in the E Building?

A. I don't know.

Q. Were there more machinists working in the Theta Building than in the E Building?

A. No.

Q. About the same?

A. That is right.

Q. Now with respect to the security regulations at Los Alamos were you searched at all when you came in to report to work in the morning?

A. No.

[fol. 880] Q. Pardon me?

A. No.

Q. Were you searched at all when you quit at the end of the day?

A. No.

Q. Were there any security police or guards around?

A. There were.

Q. Were they in the E Building?

A. They weren't in the buildings, no.

Q. Were they in the Theta Building—were they outside the building?

A. They were at the entrance to the building—at each entrance.

Q. When you came to work in the morning and when you left at the end of the working day was it necessary for you to pass through this screen of security police?

A. That's right.

Q. Did those security police look over any packages or any other thing that you may have had on your person either coming in or going out?

A. They did that.

Q. And were you frisked—do you know what "frisked" is?

A. I have learned.

Q. Well—you have learned. You learned that in jail. All right, then we both understand the term. Were you frisked when you came in to work in the morning or when you quit in the evening?

Mr. Saypol: I think Mr. Bloch ought to be relieved of any unconscious implication that he cast upon himself.

[fol. 881] Mr. E. H. Bloch: I didn't mean it; I didn't mean it.

Q. Frisk means somebody touching your person to find out whether you have something on your person, isn't that right? Isn't that the definition of frisk?

A. That is right.

Q. Now, did you at any time ever take out of the Los Alamos project to your home or to any quarters which you were using for dwelling purposes any blueprint or any sketch during any of the months or years that you worked at the project?

A. No, I didn't.

Q. How long did you continue to work as a machinist until you were promoted to the assistant foreman's position?

A. From about March, 1945—I still continued to work as a machinist.

Q. But you supervised other men?

A. Yes. I mean I still——

Q. You were what one would call a working foreman?

A. That is right.

Q. So that when your wife came down to visit you in Albuquerque, New Mexico, in November, 1944, and during the time when you received your first furlough in New York in January, 1945, you had not as yet been promoted to be an assistant foreman, is that correct?

A. When my wife was out there I was already.

[fol. 882] Q. No, maybe I misunderstood you. Let us clarify the record. When you became an assistant foreman, I believe you said sometime in 1945—maybe I didn't——

A. I said about March, 1945.

Q. March, 1945?

A. Yes.

Q. Your wife came out to see you for the first time?

A. Oh, in 1944, that is right.

Q. And your first furlough to New York was in January?

A. That is right.

Q. At that time you were still a machinist and you had not been promoted to be an assistant foreman or working foreman, is that right?

A. That is right.

Q. And while you were working as a machinist until the time you were promoted to be an assistant foreman, what color badge did you wear around the project?

A. I would like to explain that a little, Mr. Bloch.

Q. Certainly.

A. When I first came to the Project they had three color badges. There was a white, blue and red. Now, the blue badge was the one you were supposed to wear if you could know what you were working on but nothing further. The white badge knew practically everything. The red was where the person wasn't supposed to know anything of what was going on.

Q. Correct.

A. Now, these badges were changed sometime during the [fol. 883] Project.

Q. During when?

A. During the Project, during the year, that year.

Q. 1944?

A. 1945.

Q. No, no—all right.

A. Now wait, let me explain, and then I will go back.

Q. All right.

A. Now, they changed that. At that time they switched the blue to the red position so that if you had a red badge it was what you used to have when you had a blue badge. At the time you are talking of you had a blue badge which was the equivalent later on of the red badge.

Q. So there was a white badge in 1944 and that badge was worn by the top scientists, the real top men in the Project, is that right?

A. Yes.

Q. The more important officials?

A. Yes.

Q. All the most important officials?

A. That is right.

Q. And then came those who were employed regularly at the Project, and this is quite rough, people like you?

A. Yes.

Q. And they wore the blue badge?

A. That is right.

Q. And people who came in sporadically or temporarily to do work on the Project wore the red badge?

A. That is right.

[fol. 884] Q. Let us fix our minds on these badges because I want to cover 1944 on. During that year did you procure any information concerning the work at the Los Alamos Project from anybody outside the E Building or the Theta Building?

A. From November 29th after I had seen my wife until January 1, I did get information.

Q. You did? You were still wearing the blue badge?

A. That is right.

Q. Now I want you to name one scientist from whom you received unauthorized information?

A. By that you mean that he knowingly gave me the information?

Mr. E. H. Bloch: Now may I have Government's Exhibit 1, please.

Q. Now, Government's Exhibit 1 in evidence deals with the regulations governing the conduct of employees at the Los Alamos Project, does it not?

A. That is right.

Q. This you identified. Is there anything in these regulations which prohibit an employee from giving information to another employee outside the official routine run of business?

Mr. Cohn: Now, your Honor, I think the exhibit speaks for itself. I tried to inquire into the contents of the exhibit and was stopped on the ground that the exhibit does speak [fol. 885] for itself, and I think it does in exact terminology.

The Court: No. That is a proper question.

(Last question read.)

A. I don't know exactly what it says in there because I haven't read it recently, but I suppose it does state something to that effect.

Q. Now, you stated that after your wife came to visit you around November 29, 1944, until the time you got your first furlough in January, 1945, you did get information outside what would come to you in the official discharge of your duties as a machinist, is that right?

A. That is right.

Q. And did you procure that information from somebody who was not assigned permanently to the E—I think at that time you were in the Theta Building, weren't you, at the Theta Building?

A. Well, first of all a scientist—it was anybody who was employed up there as a scientist. That could be a G. I., a civilian, and I did procure for instance the fact that Baker was Bohr from a man who happened to be a scientist.

[fol. 886] Q. What is the name of that GI?

A. William Spindel.

Q. Did you procure any information, to which you believe

you were not entitled, from any scientist during this period from November 29, 1944, to January 1, 1945?

Mr. Cohn: I object to that.

The Court: Upon what grounds?

Mr. Cohn: I don't think it is relevant.

The Court: All right. What is the ground? I don't see the relevancy as to whether he got the information to which he didn't think he was entitled?

Mr. E. H. Bloch: This is on the question of credibility, your Honor. This man is testifying that he is relying solely upon memory and he testified that he procured certain information.

The Court: You say it is on the question of credibility?

Mr. E. H. Bloch: That is right.

The Court: You may go ahead. What is your question now? Put it again.

Mr. E. H. Bloch: Will you read the question, please.

(Question read.)

A. I told about Bohr.

Q. You told us about Bohr already. You said you got [fol. 887] that information from this GI, whose name is Spindel. Now I am asking you if you got any information from any scientist working on that project during that period?

A. I was in the room when I heard discussions about implosion effect experiments, implosion effect of lenses, while some scientists were discussing it in the office of the building I was in.

Q. Were you lawfully in that building at the time?

A. I had come in to pick somebody up to go to lunch.

Q. You weren't there unlawfully?

A. No, there was nobody telling me not to go into this room or that room. There are certain restricted areas.

Q. Yes, but you couldn't wander around the development, could you?

A. All over the tech area, it was perfectly all right for me to go.

Q. Even when you are machinist?

A. Absolutely. In my case, in my building, in my group, I don't know anybody else.

Q. We are confining ourselves to the time before you became assistant foreman.

A. Yes.

Q. Any other incidents?

A. You said "that month". Well, that is all I remember for that month.

Q. Now then after you returned from New York on your first furlough, did you receive any information from any [fol. 888] scientist on that project outside of information that would come to you through the discharge of your official duties?

A. Yes, I did.

Q. And from whom?

A. Well, it was in the theoretical physics department.

Q. Where was that located?

A. In the Tech area.

Q. What building?

A. "T" building, probably.

Q. "T" building?

A. Probably, and this man was a mathematician who worked there, gave me a pretty good idea of what the lenses were about; he knew the physics, I mean, involved.

Q. Was this in the course of an official lecture that you attended?

A. No.

Q. This was in a private discussion?

Mr. Saypol: Just a minute, Mr. Greenglass. May I voice an objection at this stage to certain phases of this cross-examination, in what I consider to be the selective use of certain words which might tend to give the impression that only a given type of information was restricted, and therefore there could be no illegal transfer of that material. In the first place, when counsel addresses himself to the witness, inquiring as to whether any information was obtained from scientists, or a scientist, the narrow implication is that otherwise it was free to be received by him. For the sake of the discussion and my argument, and bearing in [fol. 889] mind an observation made by your Honor a moment before, I conceive, it is my theory of the case, that one like this defendant could find material in that project in a wastepaper basket, discarded in violation of the regu-

lations—they were to be burned—and that would come within the purview of the law.

Now I request the Court that counsel be directed to address his questions to information obtained in violation of these regulations which are contained in Government's Exhibit 1, without restriction by the use of such words as "scientist".

Mr. E. H. Bloch: Well, if the Court please,——

The Court: I don't need any argument.

Mr. E. H. Bloch: All right.

The Court: As I understand it—and I think it is perfectly clear to the jury—everything was restricted there, everything. Is that right, Mr. Bloch?

Mr. E. H. Bloch: Everything was restricted except what an employee necessarily was permitted to find out in connection with the discharge of his official duties. In other words, may I just say this: suppose a machinist is working on a blueprint; naturally that was restricted in the eyes of the world, but it was not restricted to him. I am talking about unlawfully.

[fol. 890] The Court: It was restricted beyond him.

Mr. E. H. Bloch: Yes, that is right.

The Court: So that as to that particular limited piece of information, he was permitted to know it, period.

Mr. E. H. Bloch: That is correct. Now I am inquiring as to information received by this witness, to which he was not entitled in the discharge of his official duties. I tried to make that as clear as possible, and I now restate that that is the sole purpose of these questions.

Mr. Saypol: May I make a further observation? The very language of these regulations, both in respect to receiving information from unauthorized persons or unauthorized information, or giving unauthorized information or giving it to unauthorized persons, demonstrates the broad generality of the restricted area.

The Court: Proceed.

By Mr. E. H. Bloch:

Q. Now, I believe on your direct examination you told us, in substance that you snooped around to get information; isn't that right?

The Court: Don't shake your head. You had better answer.

A. Oh, yes, yes.

[fol. 891] Q. And you would make it your business to enter into a conversation or overhear conversations where you could pick up information?

A. That is right.

Q. Is that correct?

A. Yes.

Q. Now, could you give us just two instances of information that you picked up that way?

A. I came into a room; there was a piece of material on the table; I picked it up and I said "It is an interesting piece of material and it is interestingly machined." The man I spoke to and another man was there said, "Oh, that is neutron source," and explained how it was used, in a conversation. That is one way. That is one instance.

Q. Was that in the tech area?

A. It was in the tech area.

Q. All right, give me another instance—just pardon me, Mr. Greenglass. I don't like to break the trend of thought, but just for clarity, in connection with this first illustration of how you picked up information; were these men, who told you about the fact that this piece of material would have something to do with neutrons, were these men, these employees, top scientists?

A. Now, look, every scientist had a white badge there.

Q. Were they white badge men? Let me put it that way.

A. One was a white badge man; one wasn't.

[fol. 892] Q. All right, now go to the second instance.

A. Another instance. A man came in to me with a sketch—with a piece of material; said "machine it up so that I would have square corners, so I could lay out a lens; come over and pick it up." I would go over to his place; he was a mathematician, a scientist, he had laid it out, and I would say, "What is the idea"? He would tell me the idea.

Q. Tricky like, eh?

A. Nothing tricky about it.

Mr. Cohn: Your Honor——

The Court: Strike that out.

Mr. Cohn: I think that should be stricken, your Honor.

Q. Well, you meant to trick, did you not, the person who was talking?

A. Well, I meant to get the information from him.

Q. By trick, didn't you?

Mr. Cohn: Your Honor, we have had that many times.

Mr. E. H. Bloch: All right, I will withdraw it, but I just wanted the Court to know that I wasn't using words loosely.

Mr. Saypol: That is why it was objected to, because it wasn't being used loosely.

[fol. 893] The Court: All right.

Q. Now, then, when you were a machinist, were you given a blueprint now and then to work on?

A. That is right.

Q. And were you ever given, as a machinist, a job to do without cooperation with other machinists?

A. Surely.

Q. Now, the job that you did was only a part, however, of the matter, or the material that was to be constructed in connection with an over-all blueprint; isn't that so?

A. Sometimes, yes. Sometimes it was something by itself.

Q. And when it was something by itself, wasn't it just the construction of some little metal bar or some other little appliance?

A. A lot of little appliances go into making something bigger.

Q. That is correct; you didn't make all the appliances that went into this lens, did you?

A. Of course not—in the lens mold, I made a complete lens mold.

Q. You yourself made a complete lens mold?

A. That is right.

Q. Did you make the complete lens mold that was subsequently assembled at the remote project, at which the detonation went off?

A. I can't tell.

[fol. 894] Q. You don't know that?

A. I don't know that.

Q. How long did it take you to make the complete lens mold?

A. Well, the flat type lens mold would take me about twenty-four hours of work.

Q. Were other machinists likewise trying to construct flat lens molds?

A. Certainly.

Q. And did they also work from blueprints?

A. Of course.

Q. Did you ever make a copy of any of the blueprints that were given to you to work on?

A. I made a copy for my own use in the shop.

Q. Did you ever make a copy of any blue print and take it out of the project?

A. I did not.

Q. Did you ever steal any documents, whether it be blueprints or any other matter, or even including any material, and take it out of the project to your home?

A. I did not.

Q. Or to the place where you stayed?

A. I did not steal anything of that nature. I made a radio; I took the radio out; I showed them the radio on the way out, and it was perfectly permissible to do that. I made a phonograph attachment; I brought that out with me, too.

Q. So that we can be very clear about this now, when you made the sketches for the Government, and particularly the sketches which have been marked as Government's exhibits 2, 6 and 7, you relied solely upon what [fol. 895] you remembered you had done and the knowledge that you had accumulated while you were working at Los Alamos prior to 1945; is that right?

A. Prior to 1945?

Mr. Saypol: 1946.

Q. 1946.

A. That is right.

By the Court:

Q. And would you give the same reply with respect to the sketches that you said you turned over to Rosenberg, and that was also a reconstruction of what you carried in your mind of the type molds, that is, as to 2 and 6 anyway, as to the type molds you had made, and then as to the process which is incorporated in 7?

A. That is correct.

By Mr. E. H. Bloch:

Q. And that was true also of the material that you said you turned over to Gold?

A. That is correct.

Q. Now, tell me, when you worked on the lens mold, or, in fact, when you worked on any piece of apparatus while a machinist, were you given any lectures as to the functions of the particular piece that you were working on and constructing? This was while you were a machinist now.

A. What do you mean by lectures; formal lectures, in a group?

Q. Let's separate all the possibilities. Were you ever [fol. 896] given any formal lectures?

A. No.

Q. Were you ever given any informal instructions?

A. Yes.

Q. Concerning their function?

A. Yes.

Q. Now were you ever told their functions in relation to the complete object that was to be constructed?

A. There are different types of lens molds. Some were not used on the bomb itself, and some were just used for experiments.

Q. How many lens molds in all would you say were constructed at the Theta building while you were working there?

Mr. Cohn: I object to that as irrelevant, as to how many lens molds were constructed at the Theta building.

The Court: Need we have that?

Mr. E. H. Bloch: He said "many." I will be satisfied with the answer "Many."

The Witness: Many.

[fol. 897] Q. Now Mr. Greenglass, can you sketch for us every lens mold upon which you worked or which was constructed at the Theta shop in Los Alamos?

A. Not everyone but I can draw—sketch a good deal of them.

Q. A good deal of them—showing the developing process and the improvements that had been made; can you do that?

A. The sketches are—well, that was only the improvement in the curve, and I didn't know that. The curve looked the same to me—maybe a little flatter or a little more tapered but I couldn't tell which curve was—I mean it would be very difficult to tell which one was the improvement over the other.

Q. You did not even know the formula for the curvature, did you?

A. That is exactly correct.

Q. What? You had to be a scientist to know the formula, isn't that right?

A. That is right.

Q. Now, I would like to direct your attention to the time that you said you came to Rosenberg's house in September, 1945. I think you testified—again check me; I am doing this in substance and rather roughly—that you and your wife came there sometime in the evening?

A. September, 1945 I came in the afternoon.

Q. Well, when was the time that this Ann Sidorovich was there?

A. That was January, 1945.

Q. All right, then let us forget about September and [fol. 898] go to January.

In January, or the early part of January, I believe you testified you came to the Rosenberg house in the evening and you met Ann Sidorovich?

A. That is right.

Q. You said you knew her husband?

A. I had known her husband.

Q. Prior to the time that you were introduced to her that evening?

A. That is right.

Q. And that was the first time you met Mrs. Sidorovich, is that correct?

A. That's right.

Q. Were you told where Mrs. Sidorovich lived at the time you were introduced to her?

A. I don't believe that I knew that at the time.

Q. Now you say you did know Mr. Sidorovich?

A. That's right.

Q. How often had you met him prior to the time that you first met his wife?

A. Well, Julius had introduced me to him and I had met him while I was going to school. I met him—I seen him around school and we talked together a number of times.

Q. Don't you——

A. I met him on buses.

Q. Would you want to change your answer if I suggested to you that the Sidorovichs did not live in New York City in January, 1944?

[fol. 899] A. It wouldn't—make any difference——

Q. In 1945, I am sorry.

A. It wouldn't make any difference to that because I met her there. I did not know anything about where they lived.

Q. Now we are talking about time. You may have met her there but I am trying to focus your attention on the time. Is it your testimony unequivocally that in January, 1945 you met Ann Sidorovich at the Rosenberg's home in Knickerbocker Village?

A. That is correct.

Q. All right. Now I think you testified that Julie Rosenberg told you that he had received from the Russians or from the Russian Government, a watch. Did you ever see that watch?

A. He showed it to me.

Q. Describe it?

A. It was a round watch, round dial watch with a sweep second hand.

Q. With what?

A. A sweep second hand—round faced watch with a

sweep second hand, and it had—at the time he first showed it to me I believe it had a leather strap.

Q. Did you ever see the watch that you say Ethel got from the Russians?

A. I might have seen it but I didn't—I didn't——

Q. Didn't what?

A. Well, I wasn't told that that was the watch.

Q. Can you describe the watch that you saw on Ethel's [fol. 900] hand or any time when she had a watch on her hand in her possession?

A. I can't describe that watch, no.

Q. I think you also said that the Rosenberg's told you or Julie Rosenberg told you that he received a console table from the Russians. Did you ever see that console table?

A. I saw that console table.

Q. Describe it?

A. Well, they had it up against the wall. It is a dark color, mahogany probably. It is wider than that table right there (indicating)—I mean the length.

Q. Wider than which table? Do you mean the table against which I am standing (indicating)?

A. Yes. It is longer—it is a little bit wider, and it is maybe four feet long, maybe three and a half, four feet long.

Q. Mr. Greenglass——

A. And it is——

Mr. Cohn: Wait. I would like him to finish the answer.

Mr. E. H. Bloch: Yes, I want it.

Q. But you are a machinist, you understand that descriptions of lengths don't show up by this table, because that doesn't appear in the record. Then tell us how long it was and how wide it was?

A. I would say it was about—you see, the top of the console table, one side lifted up so it made an "L" if you had it against the wall, and that is the way I saw it. [fol. 901] With the "L" up against the wall, it was about three and a half feet, maybe three feet long (indicating), except that is the width when the console table is opened

up and the part of the table underneath the head or the board on top is about two feet wide.

Q. Now when was the last time you saw that console table in the Rosenberg's house?

A. It was some period between '46 and '49. I can't place it.

Q. Well, do you mind thinking for just a moment about that?

A. I can't definitely say when was the last time I saw it. saw it.

Q. Was that the only console table in Rosenberg's living room?

A. Yes.

Q. And was that console table used for eating purposes?

A. That console table was used for photography.

Q. For photography?

A. That's right. Julius told me that he did pictures on that table.

Q. Did you ever—withdrawn.

Q. Were you ever at the Rosenberg's house when food was served on that table?

A. I might have been.

Q. I think you also testified that Rosenberg said to you he received a certificate from the Russians?

A. A citation.

The Court: A citation.

[fol. 902] Mr. E. H. Bloch: A citation—I am sorry.

Q. A citation. Did you ever ask him to show you that citation?

A. I never asked him to show it to me, no.

Q. Did you ever see it?

A. I did not see it but he said there was——

Q. No, no——

Mr. Cohn: May we have the balance?

The Court: Go ahead.

A. (Continuing) There were certain privileges that went along with that.

The Court: Yes, you told us that.

Q. Now did he tell you in any detail how that citation read?

A. I don't believe he did.

Q. Weren't you impressed when Rosenberg told you that he received a citation from the Russian Government?

Mr. Cohn: I object to whether or not the witness was impressed, your Honor.

The Court: I will sustain the objection.

Mr. E. H. Bloch: I respectfully except.

Now, may I have the Jello box exhibits, please?

(Handed to Mr. Bloch by Mr. Cohn.)

Q. Now Mr. Greenglass, let us come to this Jello box incident. I believe your testimony was, substantially, that in September—I am sorry, in January 1945 after Ann [fol. 903] Sidorovich left, you and your wife remained along with the Rosenbergs?

A. That's right.

Q. And then this Jello business took place, is that right?

A. That's right.

Q. Now I am going to show you Government's Exhibit 4 (handing witness), and I went you to look at that very, very carefully and after looking at it very, very carefully I want you to tell the Court and jury whether that is substantially similar to the part of the Jello box which corresponds to that that you allege was used that night.

Mr. Cohn: I don't quite understand the question myself, your Honor.

The Court: You are asking him whether this is the same kind of Jello box that was used in 1945.

Mr. E. H. Bloch: That is right. It is not the contention that this was the Jello box that was used?

Mr. Cohn: No.

Mr. E. H. Bloch: That is what I want to know.

Q. I want to know whether it is substantially similar?

A. It is substantially similar.

Q. Is it identical?

A. It is not identical, no.

Q. What is the difference between the box you have in your hand marked Government's Exhibit 4 and the box that you claim was cut up that night at the Rosenberg house in January, 1945?

A. They made a darker colored box at the time. It [fol. 904] seemed to me much darker than this, than the way it is now.

Q. ANy other differences?

A. I didn't read the Jello box then and I haven't read this one now.

Q. How can you answer or how did you answer intelligently my question before when I asked you whether or not this box was substantially similar to the one that was used at the Rosenberg house?

A. It said Jello on both boxes.

Q. That is the only similarity that you can see, is that right?

A. And the shape of the box is about the same.

Q. Do you notice on that box Government's Exhibit 4 there is a description of the flavor?

A. I do.

A. What is the flavor on Government's Exhibit 4?

A. Raspberry.

Q. Is it imitation raspberry?

The Court: Is that material?

Mr. E. H. Bloch: It might be.

The Court: Or is it facetious?

Mr. E. H. Bloch: No, no. It might be.

The Witness: Imitation raspberry.

Mr. E. H. Bloch: May I say to the Court that I can see what might be coming in the Government's case and I think this is an important piece of testimony that purports [fol. 905] to link up my client with Harry Gold.

The Court: All right, no argument, Mr. Saypol.

Go ahead. Proceed.

Mr. Saypol: I would like permission to make one statement.

The Court: Make it very brief.

Mr. Saypol: All right; I certainly can't see how the flavor of the Jello would have anything to do with it.

The Court: I can't either, but I will let him ask it. It seemed to me like attempted humor but I may be wrong.

The Witness: What was the question?

(Question read.)

A. This was imitation raspberry flavor.

Q. What was the one you say was used in Rosenberg's house?

A. I really don't know.

By the Court:

Q. Didn't I understand you to say that they had gone into the kitchen, Mr. Rosenberg, Ethel Rosenberg and your wife?

A. That is right.

Q. And you were in the living room?

A. Yes.

Q. And they brought out the piece cut up?

A. That is right.

[fol. 906] By Mr. E. H. Bloch:

Q. And they didn't bring out this part of the Jello box which is marked Government's Exhibit 4, is that right?

Mr. Cohn: Your Honor, I might state that it is marked Government's Exhibit 4 for identification.

Mr. Saypol: Yes, and probably for that reason.

The Court: Mr. Bloch wanted it marked for identification.

Mr. Saypol: Probably for that very reason.

Mr. E. H. Bloch: Yes, for that very reason and as a matter of fact, I now introduce it in evidence.

The Witness: But the box itself I never did see. I was given a very good idea what that Jello box looks like and I know what it looks like from previous experience.

Mr. E. H. Bloch: I would like to introduce Government's Exhibit 4 for identification in evidence.

Mr. Cohn: I think it has no relevancy at all but if Mr. Bloch feels that it is going to be helpful in any way I have no objection.

The Court: It may be received with the understanding that the witness said he didn't see the box or the side of it cut up in the kitchen.

(*m*arked Government's Exhibit 4.)

[fol. 907] By Mr. E. H. Bloch:

Q. Are you color blind?

A. I am.

Q. Do you know what color this is?

A. I do not. If you will notice Mr. Bloch——

Mr. E. H. Bloch: I move to strike any gratuitous statements of the witness.

The Court: Yes.

Q. Now then——

The Court: Are you going into a new subject?

Mr. E. H. Bloch: I am continuing on the Jello box, your Honor.

Mr. A. Bloch: May we step up for a minute?

(The following proceedings took place at the bench, outside the hearing of the jury.)

Mr. A. Bloch: I think in the interest of time we could take a recess now.

The Court: Senior says in the interest of time we might take a recess now. He thinks we will save some time if we take a recess for the evening.

Mr. E. H. Bloch: I would like it. I have worked hard all day.

The Court: All right.

Now, will you make every effort to curtail your cross?

Mr. E. H. Bloch: Yes, As a matter of fact, I don't think [fol. 908] I have too much more.

The Court: We will recess and will you make an effort in the interest of expediting this thing to shorten your cross?

Mr. E. H. Bloch: Yes.

The Court: I am sympathetic with what you are trying to do. I think you could have done it in less time than you did it. You have your way. Every cross-examiner has his own way of doing it, but you have a way of being ponderous. Some take big steps; you take small steps. I think that is the best way to put it.

Mr. A. Bloch: I think the question of saving time should be addressed. to me.

Mr. E. H. Bloch: I have a double burden, your Honor.

(The following proceedings took place in open court in the presence and hearing of the Jury.)

The Court: We will recess at this point, ladies and gentlemen until 10:30 tomorrow morning.

(adjourned to March 14, 1951 at 10:30 a. m.)

[fol. 909] New York, March 14, 1951.
10:30 o'clock a. m.

TRIAL RESUMED

(Jury in box.)

DAVID GREENGLASS, resumed.

The Court: I might say to the jury while we are waiting that the exhibits we refer to as Government's Exhibits 2, 6 and 7, the sketches that were prepared by the witness, Greenglass, I do hope it is made clear to you that these sketches were prepared in anticipation of the trial by the witness and reflect, the witness says, copies of the sketches which he had turned over to Rosenberg. Now, they are introduced into evidence for the jury's edification, because it is felt that mere language cannot describe to the jury what was contained in the sketches that were turned over to the defendant Rosenberg. So, on that ground, these sketches were introduced.

Mr. E. H. Bloch: If the Court please, I assume that whatever objection I made at the time of their original introduction remains, because I don't want my silence at this time to acquiesce in the ruling.

The Court: In other words, I want it made clear I did [fol. 910] not introduce it on the ground that it is secondary evidence. That is not the ground upon which it was int-oduced.

Cross-examination continued.

By Mr. E. H. Bloch:

Q. Now, Mr. Greenglass, I believe almost at the end of your testimony yesterday afternoon you told this Court and jury that you were color blind; is that right?

A. That's right.

Q. Now, I show you Government's Exhibit 10 (handing to witness) and ask you whether you can tell us what color that bag is?

A. From previous experience, when I see a shading of this nature, I say it is brown. I don't actually see the color brown, but I say it is brown and I know that I have heard words to the effect that "brown paper bage," "brown manila paper," I realize that it is brown; everybody accepts it as brown, so I call it "brown."

Q. Even though you are not sure this is brown?

A. No.

Q. Now, is it your testimony, Mr. Greenglass, that you gave the $4,000. to your brother-in-law wrapped in this bag?

A. Wrapped in that paper, yes.

Q. You didn't turn over this bag, Government's Exhibit 10, to the Government authorities, did you?

A. I did not.

Q. Have you ever done shopping for your family?

[fol. 911] A. I have.

Q. And have you purchased articles at grocery stores and meat markets and other retail establishments, where the food and other articles of consumption were wrapped in paper bags?

A. I have.

Q. I want you to take a look at Government's Exhibit 10, please (handing to witness); take it out of the cellophane wrapping and tell the Court and jury whether or not you see any distinguishing characteristics on that bag which would differentiate it from the ordinary common shopping bag that people get in grocery or meat markets or other retail establishments.

A. This bag was torn at the time I got it. It was wrapped this way.

Q. Which bag?

A. It wasn't in the bag, it was torn and I recognized it by the torn edges.

Q. Now, in other words, as I am holding this bag—well, this isn't a full bag, is it?

A. It was torn.

Q. Just a second.

A. I said, "Wrapped."

Q. No, no, just for the record, Mr. Grenglass——

The Court: No, will you finish what you were going to say?

Now, Mr. Bloch, this business of interrupting a witness and interrupting me when I talk has got to stop. Now let him finish what he is going to say.

[fol. 912] A. (Continuing) I never said it was in the bag. I said it was wrapped in a torn paper bag. The bag had been ripped off and it was wrapped in it. That is how I recognize it.

Q. Now, is it your testimony that this $4,000. came wrapped in this paper, which is Government's Exhibit 10, but it was not in a bag form?

A. It was not in a bag form.

Q. Was this Scotch tape on the paper at the time you received the $4,000. (exhibiting)?

A. Yes.

[fol. 913] Q. And was this part of the piece of paper of Government's Exhibit 10 torn at the top?

Mr. Saypol: Referring to the upper edge.

Q. Referring to the upper part of the paper?

A. It was torn, yes.

Q. It was torn? Now I want you to illustrate to the jury and to the Court just how that $4,000. was wrapped in the bag and where the Scotch tape was.

A. (Witness folds paper.) Wrapped in that way (indicating).

Q. Wrapped in that way, meaning—I want to get you straight—meaning that this torn part that you were just talking about——

A. There were other torn——

Q. Just a second, may I finish the question. You correct me if I am trying to say anything which you don't understand: That this torn part which you showed us was not visible from the outside when the $4,000. was wrapped in it, is that correct?

A. That is right.

Q. You say there were other torn parts. Where were the other torn parts?

A. Along the edges which I saw because they were folded over. I saw that they were torn. I also noticed this cellophane on it, this cellulose tape. I also noticed that.

Q. Now, let us come to the other torn parts. You say that along the edges there were other torn parts, is that [fol. 914] right?

A. Yes, and they were folded in to the edges.

Q. Now, are you now referring—Mr. Saypol, I want to get this straight.

Mr. Saypol: All right.

Q. (continuing) Before we were talking about the torn part.

A. I was talking about the thing in general had torn——

Q. I know, but we want to be detailed about it. The top was torn. You testified that before. At least you mean ragged.

A. Ragged, yes.

Q. Is that right?

A. Yes.

Q. Now, are you telling the jury that the sides were ragged also?

A. Yes, they were pretty ragged.

Q. And is this what you mean by ragged sides (indicating)?

A. That is right, and also I do mean that the bottom is slightly irregular too.

Q. And the bottom is slightly irregular too?

A. Yes.

Q. You mean by irregular that where the Scotch tape was placed there is a little notch?

A. What I am trying to get at is that when I opened this thing up slightly to see that there was money in there I was able to see that there were torn edges and so on and so forth, an irregular bag.

[fol. 915] Q. After you opened up that bag—I withdraw that. When did you open up this package?

A. A little later that same day.

Q. Was your wife present?
A. I believe she was.
Q. Well, do you know or don't you know?
A. She was in the room, or she could have seen it, I am sure.
Q. Did you call her attention to the fact that you had $4,000. in this bag?
A. I did.
Q. Did she come over and look at the money?
A. She did.
Q. Did you count the money?
A. I didn't count it, no.
Q. Didn't count it at all?
A. No.
Q. At no time?
A. No.
Q. Prior to the time you turned this money over to your brother-in-law?
A. I didn't count it.
Q. In what denominations did this $4,000. consist of?
A. In 10s and 20s.
Q. Was the money stacked up as money usually is, for instance, before a teller in a bank?
A. It was stacked up.
Q. You didn't count the money?
A. No, but I looked at it.
Q. All right. Now what was the denomination of the bill on the top?
A. Twenty.
Q. And what was the denomination of the bill on the [fol. 916] bottom?
A. There were 10s on the bottom.
Q. How many twenties were there?
A. I didn't count them, I said.
Q. How many tens were there?
A. I didn't count them and I don't know how many tens or twenties. I don't know——
Q. Well, you did look at the money sufficiently to know that there were twenties and tens, is that your testimony?
A. That is right.
Q. But you didn't count the total amount?

A. No, I didn't count it.

Q. Now, let us come back to this side of the Jello box which has been marked Government's Exhibit 4-A and 4-B, being the two respective parts of the sides.

Mr. Cohn: Excuse me, Mr. Bloch, I dislike to interrupt, your Honor, but we just checked on the record. The witness did not use the term "paper bag."

Mr. E. H. Bloch: If the Court please, I object to any interruption at this time. I think that Mr. Cohn has an opportunity to bring that out in redirect.

Mr. Cohn: Your Honor——

Mr. E. H. Bloch: I do not think Mr. Cohn should interrupt——

Mr. Cohn: I think when there is a misstatement of the record it is not only my right but my obligation, even [fol. 917] though I think it is comparatively unimportant to see that the correct wording is in the record.

Mr. E. H. Bloch: At the appropriate time.

The Court: Then this would be the appropriate time.

Mr. E. H. Bloch: All right.

The Court: If you are attempting to quote from a record where it appears, it might be better to do it that way.

Mr. E. H. Bloch: What page is that, Mr. Cohn?

Mr. Cohn: I am looking at page 759. In fact, the usual form in questioning a witness on the basis of previous answers——

The Court: I know what the usual form is.

Mr. Cohn: —is to cite a particular page of the record and to say "Were you asked this question and did you give this answer," then there is no mistake.

I am looking at page 759 of the record:

"Q. Was it wrapped in any container of any kind?"

Mr. E. H. Bloch: That is your wording.

Mr. Cohn: Yes, that is the question. The witness' answer:

"It was wrapped in brown paper."

"Q. Brown paper; is that right?

A. That is right."

[fol. 918] The Court: All right, let us proceed.

By Mr. E. H. Bloch:

Q Do you make a distinction between a bag that is torn and a bag that is whole?

Mr. Saypol: Don't I understand it is Mr. Bloch who has been making the distinction in this questioning of the witness?

Mr. E. H. Bloch: Well, I am asking him whether he is making the distinction.

Mr. Saypol: I desire——

Mr. E. H. Bloch: There seems to be some controversy about what this paper is.

Mr. Saypol: I shall try precisely to avoid interrupting anybody and I think consistently I have done that. I should make the objection, then, that this is a renewal of the cross-examination that has been indulged in immediately heretofore and should be stopped. I object to it.

The Court: I will allow it to continue for a little while.

Mr. E. H. Bloch: Would you kindly read the last question?

The Court: I was under the impression when we adjourned yesterday, Mr. Bloch, that you were going to try to shorten the cross-examination but I notice every time [fol. 919] we take a recess you seem to go back over the old field again.

Mr. A. Bloch: Your Honor, this cross-examination is going to be shortened.

The Court: He has covered the Jello situation and I thought had closed that, and he started this morning on the Jello situation again.

Mr. E. H. Bloch: That is right; the only reason I got into the brown paper situation is in connection with the color-blindness of this witness.

The Court: All right, go ahead.

Mr. E. H. Bloch: This is the last question on the subject.

(Question read.)

A. A bag that is what?

Q. Whole?

A. I did not know frankly where that piece of paper came from.

Q. Now, let us go to Government's Exhibits 4-A and 4-B. I believe you testified that one evening in the Rosenberg's house you wife, your sister and your brother-in-law Julius went into the kitchen and cut up a Jello box.

Mr. Saypol: Wouldn't it be better, if the Court please—would your Honor hear me—that any questions of this kind be from the record itself, with reference to the page?

[fol. 920] The Court: No, it will only delay it unduly.

Mr. E. H. Bloch: I am trying to shorten it.

The Court: Go ahead.

Q. Isn't that substantially what you testified with respect to the cutting up of the Jello box?

A. That is correct.

Q. And you remained in the living room?

A. I did.

Q. And I believe you testified that they came out and when they came out this side of the Jello box had been cut, as you illustrated on the witness stand?

A. That's right.

Q. And then those two pieces of paper as cut were then marked into evidence Government's Exhibit 4-A and 4-B, is that right?

A. That is right.

Q. Now who took possession of one of these pieces of paper?

The Court: Which one?

Mr. E. H. Bloch: Any one.

A. One——

Q. I will withdraw that. Did your wife—did your wife get one of these fragments or one of these parts?

The Court: Referring to 4-A and 4-B?

Mr. E. H. Bloch: Maybe he can identify just which one.

Q. Now, look at these two pieces (handing witness).

[fol. 921] A. My wife got that one (indicating).

The Court: Which one are you referring to?

Mr. E. H. Bloch: 4-A.

Q. Your wife received 4-A?
A. That's right.
Q. Now what did you see her do with Exhibit 4-A?
A. She put it in her wallet.
Q. And then after you left did you see Exhibit 4-A at your home in New York City?
A. I did.
Q. Did she pull it out of her wallet?
A. That's right.
Q. Did you look at Exhibit 4-A?
A. That's right.
Q. Did you examine it carefully?
A. I looked at it so that it was impinged upon my mind.
Q. Can you tell us what the printed matter on 4-A contained?
A. I cannot.
Q. That was in January, 1945, correct?
A. That's right.
Q. And then I believe you testified that around June 2, 1945 on a Sunday morning Gold came to your home in Albuquerque, New Mexico?
A. On a Sunday morning Gold came.
Q. On a Sunday morning, is that right?
A. That's right.
Q. And at that time you and Gold compared these two pieces, 4-A, which you had in your possession, and 4-B which he handed to you, and you put them together and [fol. 922] they fit—fitted?
A. That's right.
Q. Is that correct?
A. That's right.
Q. Now between January, 1945 and June 3, 1945 did you ever see Government's Exhibit 4-A in evidence?
A. The one I had seen, you mean, my exhibit?

Mr. E. H. Bloch: Would you mind reading back the question to the witness?

(Question read.)

Mr. Saypol: I think that requires a little clarification obviously.

A. Oh, I can answer that.

Mr. Saypol: Just a moment. I would prefer to address myself to the Court. 4-A is a replica; 4-B is replica. Neither were in existence. I think the question ought to be reframed so as to state more accurately what Mr. Bloch has in mind.

Mr. E. H. Bloch: Well, I will be very candid with your Honor. I cannot reframe it more simply and I would be very glad if your Honor will ask the question, if your Honor knows what I am after.

By the Court:

Q. Well you understand that 4-A and 4-B in evidence are not the exact——.

A. Of course.

Q. —portions of the Jello box which were used——

[fol. 923] A. That's right.

Q. —by the person who identified himself, to wit, Gold, and the portion which was retained by your wife.

A. That is right, I understand that.

Q. Very well. You cut up a Jello box right here in the courtroom?

A. That is right.

Q. You attempted to cut it in the same fashion which you believe it had been cut in January, 1945. All right, now proceed.

A. I saw it when my wife came out to see me to stay. I said, "Do you have it, the Jello side, I mean? You didn't forget" or anything like that and she showed it to me.

By Mr. E. H. Bloch:

Q. And when was this?

A. This was about the early part of spring, 1945.

Q. 1945?

A. Yes.

Q. And did you see what your wife did with the part of the Jello box which is marked Government's Exhibit 4-A in evidence? And when I say that, that is in accordance with what the Judge was just telling you about; of course it isn't the exact thing.

A. I realize it.

Q. That substantially identical piece of paper.
A. She put——
Q. Did you see what your wife did with it?
A. She put it back in her wallet.
[fol. 923-A] Q. In her wallet. Did you see—withdrawn. Did you look at that piece of paper when your wife took it out of her wallet, when she came to visit you in the spring of 1945?
A. I did.
[fol. 924] Q. Did you read it?
A. I did not read it.
Q. Did you see that piece of paper—and I am now referring to Government's Exhibit 4-A—at any time from the time you saw your wife put it in her wallet, in the spring of 1945, at your home in Albuquerque, until June, 3, 1945?
A. No.

Mr. E. H. Bloch: Will you bear with me for one second, your Honor?

Q. Did your wife ever have Government's Exhibit 4-A in evidence in her bag?
A. The wallet was in the bag.
Q. All right. You can't describe or tell us a single word that appeared on that side of the Jello box?

Mr. Cohn: Your Honor, we have had that.

Q. We are talking about Government's Exhibits 4-A and 4-B; is that your testimony?

Mr. Cohn: We have had that two or three times, your Honor.
Mr. E. H. Bloch: Well, I would like to——
The Court: He may answer.

A. I can't—I don't know what is on that.
Q. So that you really don't know, do you, whether or not this side, which is reflected in Government's Exhibits 4-A and 4-B, was similar to the side of the Jello box that you say was cut up in Rosenberg's house in January, 1944; isn't that correct?
[fol. 925] A. When I say "similar" I refer to the shape.

Q. Only the shape?
A. Only the shape, because——

By the Court:

Q. By "shape" do you refer to the method in which it was cut?
A. The method, that's right; that is what I mean, the shape and the method in which it was cut.
Q. You are not referring to the printing on that?
A. No.
Q. What you were going to do, you were going to fit the two ends together and if they fit, then you would be satisfied?
A. That's right.

By Mr. E. H. Bloch:

Q. Did you ever hear of the words "cocoanut Bavarian cream"?
A. Did I ever hear of the words? I have heard them around, sure.
Q. Did you ever hear of the words "cocoanut Bavarian cream" or do those words mean anything to you, with reference to the Jello box which you say was cut up in the Rosenberg house?
A. Doesn't mean anything to me.
Q. Now, Mr. Greenglass, will you tell us again the names of the scientists that you gave to your wife when she came out to visit you on November 29, 1944?
A. Kistiakowski, Oppenheimer and Bohr.

Mr. Cohn: Your Honor, there is one more thing. Mr. [fol. 926] Bloch said, "the names you gave your wife when she came out to visit you on November 29th"; that was the date of the anniversary. It was a five-day affair.
Mr. E. H. Bloch: Now, Mr. Cohn, I am going to examine him, please.
Mr. Cohn: Your Honor,——
The Court: I don't want any further discussion or any arguments on this.
Mr. Cohn: May I be heard on it?
The Court: No.

Q. You were on a five-day furlough, were you not?
A. That's right.
Q. How many days did you actually stay with your wife?
A. Probably the whole five days.
Q. All five days?
A. That's right.
Q. Starting from November 29th and for five days thereafter?
A. I don't know when it started.
Q. Well, did your wife—let me ask you this——

Mr. E. H. Bloch: I withdraw it.

Q. Is it your recollection now that you started to live with your wife at that Hotel in Albuquerque, New Mexico, the very day that your wife came into town?
A. I don't recall that either.
Q. Is it your testimony that you started to live with [fol. 927] her on November 29, 1944, at that period?
A. I don't recall that either.
Q. It wasn't after November 29th, was it?
A. It was maybe a day before and some days after.
Q. Well, now let me try to refresh your recollection——
The Court: Now, is that important?

Mr. E. H. Bloch: I think it is; it may be, your Honor.
The Court: If Mr. Cohn hadn't arisen on the question of the date of November 29th, you wouldn't have spent this time on it.
Mr. E. H. Bloch: I have got something specific in mind.
The Court: Go ahead.

Q. Your wedding anniversary was November 29th, was it not?
A. That is right.
Q. Now, does that refresh your recollection whether or not you saw your wife on November 29, 1944?
A. I saw my wife on November 29th.
Q. You saw her on the second anniversary, did you not?
A. That is right.
Q. When for the first time did you learn that Dr. Oppenheimer was at the Los Alamos Project?

A. I learned that almost the same week I had come out to Los Alamos.

Q. Now I ask you whether or not you were asked the [fol. 928] following question by Mr. Cohn and whether or not you gave the following answer on your direct examination. I am now referring to page 570.

The Court: Proceed.

Mr. E. H. Bloch: I am sorry, 594. Just one second. I think I am a little confused here. Will your Honor bear with me one second?

The Court: All right.

Mr. E. H. Bloch: I am going to withdraw that last question.

Q. When for the first time did you find out that Dr. Urey was connected with the Project?

A. It was in that interval before my wife came out.

Q. Did you tell your wife about Dr. Urey?

A. I believe I did tell my wife about Dr. Urey.

Q. Now, will you go to page 570, please?

Mr. Cohn: 570?

Mr. E. H. Bloch: Yes.

Q. I ask you whether you were asked the following questions and gave the following answers:

"Q. In addition to Mr. Baker whom you came to know as Neils Bohr and Dr. Oppenheimer, may I ask you specifically, did you know that Dr. Harold Urey was connected with the Manhattan project?

A. I did.

"Q. About what point after your arrival at Los Alamos [fol. 929] did you learn that fact?

A. Oh, it must have been about December or so".

Did you give a truthful answer there? Was that a truthful answer?

A. It was as truthful as I remembered at the time.

Mr. Saypol: Would you read the next question and answer too, Mr. Bloch?

Mr. E. H. Bloch: Certainly.

"The Court: When did you learn about Dr. Oppenheimer? I do not think you told us about that.

"The Witness: That was almost at the beginning of the time I was there".

Is that correct? So you knew almost from the beginning before your wife came that *that* Oppenheimer was on that Project, correct?

A. That is right.

Q. And Dr. Bohr was on that Project?

A. That is right.

Q. And Dr. Kistiakowski was on that Project?

A. Yes.

Q. Tell me, did you snoop around prior to the time your wife came out on November 29, 1944 to find out whether or not these top scientists were on the Project?

A. No, I did not.

Q. Mr. Greenglass, did you know the pseudonym of Dr. Klaus Fuchs at Los Alamos?

A. No, I did not.

[fol. 930] Q. Did you know Dr. Klaus Fuchs at Los Alamos?

A. No, I did not.

Q. Did you know that when Mr. Gold came out to Albuquerque, New Mexico on June 3, 1945 he also was going to visit Dr. Klaus Fuchs?

A. I did not know that.

Q. Did you find out about that afterwards?

A. I didn't know about it until I read it in the newspapers.

Q. When did you read it in the newspapers?

A. Sometime subsequent to his arrest.

Q. Was it before Harry Gold's arrest?

A. No, it was afterwards.

Q. Perhaps you don't understand me. Dr. Klaus Fuchs was arrested—we will clarify it.

A. I found out about it in February, 1950 when Julius Rosenberg told me about it.

Q. You found out about Dr. Fuchs' arrest?

A. No. I found out that Harry Gold came out——

Q. No, no, we are talking about——

Mr. Cohn: Your Honor, can't he finish his answer?

Q. I am talking about Dr. Klaus Fuchs.

The Court: Are you finished now?

Mr. E. H. Bloch: Yes.

The Court: Will you answer? You were going to say [fol. 931] something. Will you continue?

The Witness: I found out in February, 1950 when Rosenberg told me that Harry Gold was the same man who contacted me, contacted Klaus Fuchs.

Q. At that time you say you did not know that Gold had met Fuchs in or about the vicinity of Albuquerque, New Mexico on June 3, 1945, that same day that he met you?

A. I hadn't the slightest idea about it.

Q. When you were questioned by the FBI down here in the Federal Building in the evening of June 15, 1950, were you shown any pictures, any photographs?

A. I don't believe I was shown any at that time.

Q. Sure?

A. Pretty sure.

Q. Were you shown a photograph of Harry Gold?

A. I might have been. I don't recall it right now.

Q. Well, at some time were you shown a photograph of Harry Gold by the FBI?

A. Yes, I was.

Q. Did you recognize the picture?

A. I recognized it.

Q. And you identified the man in that photograph as Harry Gold, did you not?

A. That is right.

Q. Now, you told us about the incident in New York City during your furlough here in January, 1944 about Rosenbergs taking you to some place on First Avenue?

A. January, 1945.

[fol. 932] Q. January, 1945, I beg your pardon. Some place on First Avenue and you were in the car and then Rosenberg got out of the car and then some man got in the car and you drove around with him and then came back. Do you remember that incident?

A. I do.

Q. Were you shown any photographs by the FBI to identify the man that you saw in that car that night?

A. Yes, I was.

Q. And did you identify any of the photographs as resembling the man that you met that night on First Avenue?

A. I saw a lot of people resembling him but I couldn't definitely say any one was the man.

Q. All right. In other words, you couldn't identify any photograph as representing a picture of the man with whom you claim you drove around in January, 1945 in connection with the First Avenue incident that you have described, is that correct?

A. That is right.

Q. How long in all were you with this man in the automobile?

A. About 20 or 25 minutes. A little less I would say.

Q. Now, did you enter into any of the conversation?

A. I spoke, I interjected a remark, yes.

Q. And did you have an opportunity to look at him during that 20 or 25 minutes?

A. I had very little opportunity to look at him and I was busy driving. It was dark, it was late; there was no [fol. 933] light in the car. I had very—almost no clear view of the man at all.

Q. Now, as little as you might have looked at him, did you look at him?

A. I had seen him, yes—I looked at him in profile. When you drive a car—I looked at him and I saw his profile looking out at the streets.

Q. Did he have a hat on?

A. It seems as though he had a hat on.

Q. When you seemed as though he had a hat on, we want to know did he have a hat on? That is an easy thing to answer, isn't it?

A. He did have a hat on.

Q. Did he have an overcoat on?

A. He had a coat on.

Q. What?

A. He had a coat on.

Q. Did he have a muffler?

A. I didn't notice that.

Q. How many pictures in all were you shown by the FBI?

A. You mean——

Q. During the entire period of your interrogation by them?

A. I didn't count them. There was a good many.

Q. More than a dozen?

A. Oh, yes.

Q. More than two dozen?

A. I suppose so.

Q. And amongst the various photographs you were [fol. 934] shown you identified various people as people you had met, is that correct?

A. I identified some, yes.

Q. Were any photographs shown to you of some of the scientists who worked out at Los Alamos?

A. I don't believe there were any photographs of any of the scientists.

Q. Was a photograph of Dr. Klaus Fuchs shown to you by any of the representatives of the United States Government?

A. Yes, but not for identification. He had it on him and he showed it to me.

Q. He showed you what?

A. A picture of Dr. Fuchs.

Q. Did he say that that was Dr. Klaus Fuchs or were you—just let me finish the question—or did he ask you whether or not that was Dr. Klaus Fuchs?

A. When he showed it to me he said "Maybe you know this fellow"? I said, "Yes, I saw him in the paper".

Q. That was your answer?

A. That was my answer.

Q. When was that?

A. I don't know exactly when it was.

Q. Was that on your first interrogation?

A. No.

Q. Was that much later?

A. Yes, it was much later.

Q. Was that before or after you testified before the grand jury?

A. I can't tell.

Q. Now, when Gold came to you in Albuquerque on [fol. 935] June 3, 1945 you say he put down a sum of money in an envelope?

A. He handed it to me in my hand.

Q. Gave it to you in your hand?

A. Yes.

Q. And did you count it?

A. Not at that moment.

Q. When did you first count it?

A. After I left him, I went back and counted it.

Q. You mean after Gold left?

A. Yes.

Q. As a matter of fact, you testified I believe that the——

The Court: Did you want to say something further before you were broken off by Mr. Bloch again?

The Witness: I said after I left him at the USO he went on his way and I came back and counted the money.

Q. Then you came back to you house and counted the money?

A. Yes.

Q. With your wife?

A. With my wife.

Q. In what denominations was that money?

A. Twenties.

Q. All twenties?

A. All twenties.

Q. Did you count that money at any time while Gold was still in your house?

A. Not that I can recall.

Q. Did Gold mention to you the specific sum of money that was in that envelope at the time he handed it to you?

A. As far as I remember he handed me the envelope [fol. 936] and said, "Would that be enough", I said—I felt it and I said, "It would be plenty". That is the way I remember the conversation.

Q. You said, "Well, it will be plenty for the present"; is that right?

A. Yes.

Q. And you say that you didn't count that money?

A. No.

Q. You didn't know whether that was in one dollar bills, two dollar bills, five dollar bills, ten dollar bills, twenty dollar bills or hundred dollar bills, did you?

A. No. I felt that it——

Q. Now, twenty dollar bills——

Mr. E. H. Bloch: I am sorry, your Honor, it is very difficult to know when he is finished. I think he finishes and that is why I propound my next question. I just don't want the Court to blame me. If you were standing here, you would see what I mean.

Q. I am sorry, Mr. Greenglass, I don't want to interrupt you unless you have finished with the question.

A. (Continuing) I felt the envelope and it felt pretty thick to me and I didn't want to appear as though I am asking for more money, so I just said, "It will be enough".

Q. Now, were the twenty dollar bills new bills?

A. No, I don't believe they were.

[fol. 937] Q. How much are twenty into 500?

A. What is that?

Mr. Saypol: Is this a test?

Mr. E. H. Bloch: Yes, it is a test.

Mr. Saypol: I object to it.

Q. You divide 500 by 20?

The Court: Overruled.

Mr. Saypol: The jury would know the answer without testimony.

The Court: He wants to see now whether he knows mathematics.

A. 25 twenty dollar bills.

Q. 25 twenty dollar bills?

A. That's right.

Mr. Saypol: Will counsel concede that he passed the test?

Mr. E. H. Bloch: Yes, I think—well, I better not say.

The Court: No, you had better not.

Q. How thick would you say that envelope felt to you?

A. It had a nice solid feel.

Q. It had a nice solid what?
A. Feel.

Mr. E. H. Bloch: I didn't get that.
The Court: Feel.

Q. Oh, nice solid feel; you felt satisfied with that feel, didn't you?
A. It was good enough.
[fol. 938] Q. What?
A. It was good enough.
Q. Now, when do you say Rosenberg told you that he had hired a lawyer for himself?
A. It was on one of these visits to my house.
Q. What?
A. Well, I believe it was the visit where he took me down on one of the walks and told me he had hired a lawyer.
Q. Would it refresh your recollection if I told you that on direct examination you said it was on that May 23rd incident?

Mr. Saypol: That is not a proper way of refreshing it.
Mr. E. H. Bloch: All right, Mr. Saypol, I will do it, your Honor.
The Court: Does it refresh your recollection whether it was on that day?
The Witness: I believe I said that; I probably said that, yes.

Q. May 23, 1950, right?
A. That's right.
Q. Is that your testimony? Are you going to stick to that?
A. Is that what I said?
Q. No, is that your testimony?

The Court: No, not is that what you said. Just a moment. Read the testimony. He is apparently not certain.
[fol. 939] Mr. E. H. Bloch: He is not certain.
The Court: He is apparently not certain of the date.
Mr. Cohn: What page is that, Mr. Bloch?
Mr. E. H. Bloch: I think that was page 751.

The Court: You are covering a lot of dates here.
Mr. E. H. Bloch: Mr. Cohn, may I consult with you?
Mr. Cohn: Sure.

(Discussion at Government counsel table.)

Mr. Cohn: Your Honor, I think Mr. Bloch's point is, he is going to ask the question from page 751 about a conversation which took place at a certain time, and the time is apparently fixed back a number of pages before, and to avoid reading the whole business, Mr. Bloch wants me to agree that this conversation on 751, the witness testified he had with Rosenberg, was at a time named back on page 745 or 746. It appears to be that the witness' answer——

"Q. About when was that?

A. It was May 22nd or 23rd, something like that."

As far as I can see, 751 does relate to that period of time and I have no objection to Mr. Bloch going ahead and examining on the basis of page 751, with the understanding that the witness testified this conversation took [fol. 940] place May 22nd, May 23rd, in that vicinity. I think he fixed it by the date his wife had gotten out of the hospital.

By Mr. E. H. Bloch:

Q. I just want to ask you one question in that respect—two questions, I am sorry. Now, you were asked by Mr. Cohn the following question:

"Q. Did he say anything to you about a lawyer?" And the record shows that you gave the following answer:

"A. Earlier, up in the apartment, he said that he had gotten a lawyer himself, that I should get one but I never did get one."

Were you asked that question and did you give that answer?

A. I did.

Q. Now, I am going to ask you again, did Mr. Rosenberg tell you on May 23, 1950 that he had gotten a lawyer for himself?

A. He said he had gotten a lawyer.

Q. All right. Now, Mr. Greenglass, after you got out of the Army, you looked around to make a living for yourself and your wife, did you not?

A. That's right.

Q. At the time you got out of the Army, did your brother-in-law, Julius Rosenberg, have a business?

A. He had a business.

Q. And what was that business?

A. The business was called "Wholesalers and Re-
[fol. 941] tailers."

Q. And where was the office of that business?

A. At my mother's house; he used their phone.

Q. And he used your mother's house as the office headquarters?

A. That's right.

Q. And at your mother's house, telephone calls were received and telephone calls were made in connection with that business that Rosenberg carried on?

A. That's right.

Q. Did he have any stock?

A. It was some stuff they had bought.

Q. When you say "they" to whom do you refer?

A. He was in business with my brother Bernard and Izzy Goldstein.

Q. That wasn't the G. & R. Engineering Company, was it?

A. No, it wasn't.

Q. That was a predecessor concern; isn't that right?

A. That's right.

Q. And then there was some discussion in the family, was there not, about you going into that business?

A. Well, when I had come home on furlough earlier, it had been agreed that I would go into a business with these people.

Q. At any rate, prior to the time that you went into that business, you had discussed it among members of the family?

A. That's right.

[fol. 942] Q. And you finally came into the business, did you not?

A. That's right.

Q. And was that the business that was known as the G. & R. Engineering Company?

A. It was not.

Q. What was that business known as?

A. I just—United Wholesalers and Distributors, something like that.

Q. Did you have an office?

A. That was the same business, in the same place.

Q. Did your office remain the same, that is, in your mother's house?

A. That's right.

Q. When you say "your mother's house," you mean her living quarters, do you not?

A. That's right.

Q. Did there come a time when the four of you, that is, your brother Bernie, Izzy Goldstein, your brother-in-law Julius Rosenberg and you formed the firm known as the G. & R. Engineering Company?

A. That's right.

Q. When was that?

A. It was in April 1946.

Q. Did you then procure a separate office for that concern?

A. We got a place of business, yes.

Q. Where was that?

A. 200 East 2nd Street.

Q. Mr. Greenglass, keep your voice up, please. How long did the four of you continue in that G. & R. Engineering Company business?

A. Until the autumn of '47.

[fol. 943] Q. Did Izzy Goldstein remain as one of the partners during this period up to 1947?

A. He did.

Q. And then did there come a time when Izzy Goldstein went out of the business?

A. That's right.

Q. And then you remained with your brother Benny and your brother-in-law Julius, isn't that right?

A. I did.

Q. When was the Pitt Machine Products Co., Inc. formed?

A. In autumn, 1947.

Q. Do you remember the month?

A. Not very well—October, I believe it was.

Q. Do you remember when the certificate of incorporation was filed?

A. No, I don't.

Q. Do you remember when you signed the certificate of incorporation?

A. I remember signing it but the exact time I don't know.

Q. Now when the Pitt Machine Products Co., Inc. was formed, is not not a fact that the three of you needed capital?

A. That's right.

Q. And you found a man by the name of David Schein who was ready to invest money in that business, is that right?

A. That is correct.

Q. And did David Schein invest somewhere approximately $15,000. in that business?

A. He did.

Q. For which he received certain stock, is that [fol. 944] right?

A. That is correct.

Q. Do you know how much stock he received?

A. He received 25 per cent—25 shares common, and he received—well, it is almost like a mortgage.

Q. Preferred stock?

A. Preferred stock, yes.

Q. And how many shares did you receive?

A. 25.

Q. And how many shares did your brother Bernie receive?

A. 25.

Q. And how many shares did your brother-in-law, Julius, receive?

A. 25.

The Court: All are common?

The Witness: All are common.

The Court: The only one who got preferred was Schein?

The Witness: That is right.

Q. And was it a requirement that all checks had to be countersigned by David Schein?

A. That is correct.

Q. Were you an officer?

A. I was.

Q. What office did you hold?

A. Vice-president.

Q. And what office did your brother, Bernie, hold?

A. Treasurer.

Q. And what office did your brother-in-law, Julius Rosenberg, hold?

A. President. My brother was secretary, I believe, not treasurer. Schein was treasurer.

Q. Schein was treasurer; and you were the vice-presi-[fol. 945] dent?

A. That's right.

Q. And were you also elected to be a member of the board of directors?

A. I believe so.

Q. You know so, don't you?

A. I believe—I know so.

Q. Yes. Now did there come a time when the Pitt Machine Products Co., Inc. started to buy machinery and build up a machine plant?

A. We had bought a lot of machinery at G. & R. Engineering, and we had only bought one machine for Pitt Machine Company.

Q. Well, didn't the G. & R. Engineering Company move from its quarters on 2nd Street to 370 East Houston Street because it needed more space?

A. That is correct.

Q. And when you moved to 370 East Houston Street wasn't more machinery purchased?

A. One turret lathe and kick press, I believe it was.

Q. Now, up to the time of the formation of the Pitt Machine Products Co., Inc., did you borrow any money for your share of the business?

A. Did I borrow any money?

Q. Yes.

A. I had some money and I put it in, and I borrowed some money and put that in, too.

Q. And when did you borrow that other money that you put in?

A. I borrowed—I was—originally we were supposed to put $1,100. into the G. & R. Engineering Company, the four [fol. 946] of us, and I put in something close to that figure and——

Q. How much did your brother Bernie put in?

A. He put in—you see, while we had the United Wholesalers and Distributors——

Q. Speak up.

A. —My brother Bernie had tried to invest in another firm called Radar Fabrics, and he had gotten $5,000. from my relatives to invest in that firm. After he found that the other firm did not make out, they just dissolved the other firm and the $5,000. was brought over to G. & R. and invested in G. & R., and we bought machinery with that $5,000. On the basis of that, we bought quite a bit of machinery because the War Assets allowed us credit and——

Q. And—go ahead.

A. (Continuing) And we were obligated, that is, the firm, all of us, we had taken on the obligation of my brother's debt. Now not Goldstein but just me and my brother-in-law and Bernard.

Q. In other words——

A. In other words, we owed a third of that $5,000. which later on turned out to be $4,000. We got it down a little.

Q. In other words, your brother Bernie——

A. That——

Q. —went out out and borrowed $5,000. which eventually found itself coming into the business, and you and your [fol. 947] brother-in-law, Julius and Bernie agreed that each of you would be responsible for one-third of that debt, is that correct?

A. Yes.

Q. And did your brother Bernie borrow that money in part from your mother?

Mr. Saypol: I think the witness wanted to finish his answer. May he?

A. Yes, I would like to.

Q. All right, go ahead.

The Court: Yes, and I do hope that soon I will see the materiality of it.

Mr. E. H. Bloch: I am coming to it.

The Court: Because at this point I don't see it.

A. The money was borrowed while I was still in the Army. I had no knowledge that the money was going to be borrowed, but when I got out and went into the business I obligated myself for this money.

Q. All right.

The Court: Why don't you get to the point?

Mr. E. H. Bloch: I am. You see, the witness is giving long answers.

The Court: No, no, you give long questions.

Mr. E. H. Bloch: Well, long questions call for short answers.

The Court: I think that many of these questions aren't [fol. 948] called for.

Mr. E. H. Bloch: All right.

Q. Now, Mr. Greenglass, did there come a time when you stopped working for the Pitt Machine Products Co., Inc.?

A. I did.

Q. And when was that?

A. In August, 1949.

Q. And did you quit because the business was very bad?

A. I quit because business was poor.

Q. As a matter of fact, for a number of months prior to August, 1949, nobody, that is, your brother Bernie, your brother-in-law Julius, Schein or you, drew any salaries from that business?

A. That's correct.

Q. Now, while you were in business at 370 East Houston Street, did you have any quarrels with your brother-in-law, Julius?

A. Only business quarrels. It didn't amount to anything.

Q. Now let us find out. Julius was the outside man, was he not?

A. That's right.

Q. He was the one who went out and tried to get orders, right?

A. That's correct.

Q. You were in the machine shop?

A. That's right.

Q. Working on the machines?

A. That's right.

Q. And your brother, Bernie, was also in the machine shop?

A. That's correct.

Q. Working on the machines, and you had a number of [fol. 949] employees from time to time, did you not?

A. That's right.

Q. Now, weren't there repeated quarrels between you and Julius when Julius accused you of trying to be a boss and not working on machines?

A. There were quarrels of every type and every kind. I mean there was arguments over personality, there was arguments over money, there was arguments over the way the shop was run, there was arguments over the way the outside was run. It was quarrels, just business quarrels——

Q. Well, whether you call them——

The Court: Just a moment. He wasn't finished.

A. (Continuing) We remained as good friends in spite of the quarrels.

Q. When——

The Court: And you saw him in 1950 after that?

The Witness: I saw him after that.

The Court: Even after you left the business?

The Witness: That is right.

Q. You did not visit him very often, though, did you, during the years 1948 and 1949 and 1950?

A. No, I didn't.

Q. No; and when you say there were quarrels, you mean there were quarrels occasioned by the business?

A. There were quarrels occasioned by the business.

Q. Did you ever come to blows with Julius?

[fol. 950] A. No, I didn't.

Q. Do you remember an incident when you were sitting

in the corner candy store at Houston and Avenue D when your brother Bernie had to separate the both of you?

A. It slipped my mind.

Q. What slipped your mind?

A. I mean I didn't remember it.

Q. Do you remember it now?

A. I do.

Q. You don't?

A. I do.

Q. You do. Did you hit Julius?

A. I—I don't recall if I actually hit him.

The Court: Do you remember what occasioned that?

Q. Will you talk up now, please?

The Court: Just a moment.

Mr. E. H. Bloch: I cannot hear him back here.

The Court: Do you remember what occasioned that?

The Witness: I don't recall what—it was some violent quarrel over something in the business. I don't recall exactly what it was. As a matter of fact, I didn't even recall the fight until just this minute. I mean I didn't realize that I had——

The Court: Subsequent to that, had you patched things up?

The Witness: Certainly. We were very friendly after that.

[fol. 951] Q. Well, when you say you were very friendly, is it not a fact that continuously—I withdraw that—or with regularity, with regularity there were disagreements and quarrels between you and your brother-in-law, Julius, with relation to how that business should be conducted?

A. There were quarrels incidental to the business. It was not regular.

The Court: Well, when would you say these quarrels ceased?

The Witness: Well——

Mr. E. H. Bloch: If they ceased, your Honor—if they ceased.

The Witness: Well, I felt that certain things were wrong and he felt that certain things were wrong, and in spite

of this, when I wanted to get out of the business, I was—there was a quarrel over that, that they did not want me to go out of the business, and I still felt I should leave the business, so I left, all in good faith—I mean——

The Court: And after you left, were there any continued quarrels over the business?

The Witness: No.

Mr. E. H. Bloch: I cannot hear this. I would like to hear it, your Honor, and I am sure the jury would.

The Court: I am sure the jury heard it.

Mr. E. H. Bloch: I doubt it.

[fol. 952] The Court: They are shaking their heads.

Mr. E. H. Bloch: Well, I didn't.

The Court: The answer was "Yes"—the answer was "No".

The Witness: No.

The Court: There were no quarrels after you left the business?

The Witness: Well——

Q. No quarrels?

The Court: Just a moment, Mr. Bloch.

Mr. E. H. Bloch: I am sorry.

The Witness: Your Honor, there were some discussions about shares that I held in abeyance and wanted some return on. I asked for a note and Julius didn't want to give me a note. I mean we had some heated words about it but we still weren't at each other's throats about it.

The Court: Now, how many times—I will withdraw that. When did you leave the business?

The Witness: In August, 1949.

The Court: 1949. Did Julius come to your home after that?

The Witness: He did.

The Court: On any of these visits did you have any quarrels about the business.

[fol. 953] The Witness: Well, we had this quarrel over the shares but in the end the quarrel was that I would give him the shares, I mean even without the note. I wanted him to sign the note but I gave it to him without the note.

The Court: What kind of oath?
The Witness: A note.
The Court: Oh, a note.
The Witness: You know, if payment for it.

Q. Mr. Greenglass, the fact remains, does it not, that you went out of that business in August, 1949, and never got a nickle for your shares?
A. That's correct.
The Court: May we take a recess at this point?

Mr. Bloch, is it convenient for you now?
Mr. E. H. Bloch: Yes, I would appreciate it.
The Court: Very well.

(short recess.)

[fol. 954] Mr. A. Bloch: May counsel step up, your Honor?
The Court: Yes.

(The following took place at the bench:)

Mr. A. Bloch: I want you to realize, Judge, that I am having my son explore all the pertinent facts in order to save time. I am not going to cross-examine and I wanted him to cover all the topics.
The Court: Well, the point is this: you take a topic like this last one—and this is off the record.

(Discussion off the record.)

By Mr. E. H. Bloch:

Q. Now, Mr. Greenglass, did there then come a time after you stopped working for that business in August, 1949, that you assigned your stock in Pitt Machine Products Company, Inc.?
A. That is right.
Q. To whom did you assign that stock?
A. Julius Rosenberg.
Q. When did you assign that stock?
A. I assigned it in January, 1950 but I didn't give it to him until late April, I believe.
Q. And I show you this book, which is marked Stock

certificates, and ask you whether that was the stock certificate book of the Pitt Machine Products, Inc.?

A. That is right.

Q. And I direct your attention specifically to certificate [fol. 955] numbered 2 which certifies that you became the owner of 25 shares of the capital stock of that corporation on December 11, 1945.

Mr. Cohn: Your Honor, two things: No. 1, I think the exhibit should be marked for identification; No. 2, if it develops that the witness recognizes it and it has probative value I think it should be offered, and at that point questions propounded.

Mr. E. H. Bloch: I think you are absolutely right, Mr. Cohn. I am going to adopt your suggestion. I now offer as defendant's Exhibit for identification a stock certificate book of the Pitt Machine Products Company, Inc.

(Marked Defendant's Exhibit C for identification.)

Mr. Cohn: Are you offering it in evidence, Mr. Bloch?

Mr. E. H. Bloch: I just offered it for identification. I am following your federal practice.

Mr. Cohn: All right.

Q. I now show you Defendant's Exhibit C for identification and ask you whether or not there is——

Mr. Saypol: Wait just a minute, Mr. Bloch. I assume I know what Mr. Bloch has in mind. The proper method is by direct interrogation. If the answers are not responsive or satisfactory from the cross-examiner's point [fol. 956] of view, the usual method is by refreshing recollection. I don't think that this record, the main issue, the issue should be cluttered with these collateral matters if it can be avoided.

The Court: He hasn't offered it in evidence.

Mr. Saypol: He is reading from the contents.

The Court: He has asked the witness a question. Let us go ahead.

Mr. Saypol: If the Court please, I ask leave to be heard.

The Court: I heard you, Mr. Saypol. The point is very clear to me. You are saying that he should not show

it to him unless the witness needs it to refresh his recollection. I understaend perfectly the purpose of that.

Mr. Saypol: The preceding question as to which objection was made by Mr. Cohn was a summarization of the contents of the document and that is exactly what I am objecting to.

Mr. E. H. Bloch: If the Court please, I must concede that I am on the horns of a dilemma. On the one hand——

The Court: Don't argue the point.

Mr. E. H. Bloch: Mr. Saypol thinks the proper method——

[fol. 957] The Court: Don't argue the point. Rest assured if the time comes when you want to offer it in evidence I will deal with the question then.

By Mr. E. H. Bloch:

Q. I show you a certificate marked certificate No. 2, which is in this Defendant's Exhibit C for identification, and ask you whether or not you recognize that?

A. I do.

Q. And is your signature upon it? Withdrawn.

Q. Does your name appear on the face of the certificate?

A. It does.

Q. Does it appear on the face of the certificate that this certificate was issued to you December 11, 1947?

A. That is correct.

Q. And on the reverse side of the certificate is there your handwriting?

A. That is right. That is my signature.

Q. That is your signature?

A. Yes.

Q. And that indicates that you assigned this certificate to Julius Rosenberg on January 4, 1950?

A. That is right.

Q. And that is the fact?

A. I held it in abeyance.

Q. Did you have this certificate in your hand at or about January 4, 1950?

A. That is right.

[fol. 958] Q. Did you have the whole book?

A. No, sir. Just the certificate.

Q. Well, was the certificate torn out?

A. Yes.

Q. I really don't want to confuse you. But this certificate was torn out?

A. That is right.

Q. All right. Then you finally signed when did you say?

A. I signed it in January.

Q. Now you signed it in January?

A. That is right.

Q. Now, prior to the time that you signed it, did your brother-in-law, Julius, ask you to assign your certificate over to him?

A. I don't recall. I think he did.

Q. And wasn't there a discussion between you and your brother-in-law as to how much you were to receive for the assignment of that certificate?

A. That is correct.

Q. And you wanted money, did you not?

A. I did.

Q. And he refused to give you money, is that correct?

A. That is correct. I wanted $2,000. and he finally agreed that he would give me $1,000. and when my wife made out the note to him to sign, he didn't want to sign the $1,000. Note. He said his word is good enough and that he will pay me at such time when he will have the money [fol. 959] available.

Q. That was——

A. $1,000. is the only thing he wanted to pay me. $1,000.

Q. Was that subsequent to the time you had already physically endorsed this certificate, this promise that you say he made to you?

A. Yes, it was afterwards.

Q. Now, did there then come a time when he came around and asked you to resign as a director and as an officer of the corporation?

A. He did.

Q. When did he come around to ask you to do that?

A. I don't remember that exactly. I know that he did it.

[fol. 960] Q. Pardon me?

A. I know that I did it.

The Court: Excuse me. Did these directors of the company really direct? Do you understand my question?

The Witness: Are you asking——

The Court: Did you ever have a meeting of the board of directors?

The Witness: I don't believe we ever had a single meeting of the board of directors. We were all in the business, except for this David Schein, and there was my brother, myself and Julius, and we handled the business right there, at the level of the shop. We never had a directors' meeting at the time.

By Mr. E. H. Bloch:

Q. Now, David Schein was a stranger in this company, in a sense, isn't that right?

A. That is correct.

Q. And you three, Bernie, Julius and you were members of the same family unit, as it were, isn't that correct?

A. That's right.

Q. At any rate, there did come a time when Julius asked you to sign a written resignation as officer and director; isn't that right?

A. That is correct.

Q. And was that last year?

A. It was last year.

Q. How many times in all would you say he asked you to resign?

[fol. 961] A. I don't know. It was a number of times.

Q. He kept coming around your house, did he not, and he was asking for your signature on that resignation?

A. Yes.

Q. And you refused to sign it unless you got money; isn't that right?

A. That is correct.

Q. And how many months was that after Julius had promised to give you some money for your assignment of the stock?

A. I gave him the stock in the late April. I remember this because he came up to the house and at the same time he told me that I would have to leave the country, and——

Mr. E. H. Bloch: May I clarify the record? I am sorry, but I think everybody now is a little confused.

Mr. Saypol: Wait.

Mr. E. H. Bloch: Let's get it straight, Mr. Saypol. I want to know when he signed.

Mr. Saypol: You interrupted him. I have to interrupt you.

The Court: You see, you enter into a discussion with the witness; you get an answer and you say, "Just a moment, just a moment. Let's get this clear; everybody is confused". I am not confused at all.

Mr. E. H. Bloch: All right.

The Court: And I think that when you get an answer [fol. 962] you don't like, ask another question. Don't comment.

Mr. E. H. Bloch: It is not that I don't like the answer, your Honor.

The Court: All right.

Mr. E. H. Bloch: May I then ask two more questions?

Mr. Saypol: If you please.

Mr. E. H. Bloch: I am sorry.

Mr. Saypol: I rose because the witness was interrupted in the middle of his answer. Then counsel confessed his confusion. All I ask for is that there be no interruption.

The Court: All right.

By Mr. E. H. Bloch:

Q. Did you actually sign the assignment of your certificate of stock on January 4, 1950?

A. That is when I signed.

Q. And then you retained the physical possession of that certificate in January and in February and in March, and you did not turn it over to Julius until April?

A. That's right.

Q. Now, after you turned over this assignment of the certificate of stock did Julius then ask you to resign as an officer and a director?

A. I believe I had resigned even before that, and this was just that he was going to get the stock. I kept telling [fol. 963] him that the stock was in a safe deposit box and that I didn't have a chance to get it.

Q. Did you ever resign as an officer or director, in writing, up to April, 1950?

A. I don't know.

Q. Well——

A. I don't know. I know I resigned.

Q. Well, didn't Julius come around to you after April and say to you, "I want your written resignation"?

A. I got—you say "after April"; I don't know if it was before April, after April. I signed a written resignation.

Q. And you can't tell us when you signed that written resignation?

A. I can't tell you exactly when it was.

Q. Would it refresh your recollection——

A. (Continuing) Because, when he came around, he probably had—he was talking in terms of me leaving the country, and that stayed in my mind more than the business and the stocks and anything else.

Mr. E. H. Bloch: Now, I would like to offer as Defendant's Exhibit for identification just this one page. (exhibiting).

The Court: You are offering it in evidence?

Mr. E. H. Bloch: I am going to offer it in evidence, yes. [fol. 964] The Court: Oh, you are offering it for identification.

Mr. E. H. Bloch: Yes.

(Marked Defendant's Exhibit D for identification.)

Q. Now, I show you Defendant's Exhibit D for identification and ask you whether or not that doesn't refresh your recollection as to when you signed your resignation as director and officer of the Pitt Machine Products Co., Inc. (showing to witness)?

A. That refreshes my recollection.

The Court: What is that date?

Q. Is that your signature?

The Court: And what is that date?

The Witness: May 1, 1950.

The Court: Very well.

The Witness: Now that even refreshes it more. Now I know——

Mr. E. H. Bloch: Before it refreshes you more, may I offer it in evidence?

The Court: Just hold it a minute.

Mr. E. H. Bloch: All right.

The Court: What were you going to say?

The Witness: Now I know that I gave him the stock that same day. It was May 1st that he came to my house.

[fol. 965] Mr. E. H. Bloch: I now offer Defendant's Exhibit D for identification in evidence.

Mr. Cohn: Your Honor, I don't think the exhibit is at all relevant here.

Mr. E. H. Bloch: I object to any remarks unless this is on a question of law.

Mr. Cohn: I assume when I use the term "relevant" it is certainly a term of law, your Honor, and I don't make objections on any other basis, and I have refrained from making them frequently when I could, on the ground of law.

The Court: As a matter of fact, whether it is relevant or material as a matter of law is for the Court to determine.

I don't see anything of any value to that whatsoever. You have the answer from the witness; you have got your date; you have got a signature; you have the admission. It is purely cumulative.

Go ahead.

Mr. E. H. Bloch: Is the Court refusing to admit it?

The Court: That is right.

Mr. E. H. Bloch: I respectfully except.

The Court: That was D for identification?

Mr. E. H. Bloch: That is correct.

Q. Are you sure that it was May 1, 1950 that you signed [fol. 966] Defendant's Exhibit D for identification?

A. I believe so.

Q. Was it later?

A. No, it was not.

Q. Did you get any money when you signed that resig-

nation, reflected in Defendant's Exhibit D for identification?

A. I did not.

Q. How much money in all did you lose, of your own funds, in the Pitt Machine Products Co., Inc.?

Mr. Saypol: There has been no testimony about any loss. I don't know what counsel has in mind.

Mr. E. H. Bloch: I will withdraw the question.

The Court: If he did.

Mr. E. H. Bloch: I am trying to shorten it, your Honor.

The Court: Did you lose any money?

Mr. Saypol: Will your Honor allow me to make a statement on the record about one phase of this examination? I have allowed it to proceed in these aspects, even though it is patently direct testimony as to these phases. None of it was touched on direct, as far as the Government is concerned. Counsel has made this witness his own in these respects.

The Court: No, you are wrong, Mr. Saypol.

Mr. Saypol: Well, that is my view, and I desire to express it. I have refrained from objection and I want the [fol. 967] record to show my reason for not doing so.

The Court: Well, I take it he has got a different reason for asking these questions and I believe I know his reason, and for that reason I have permitted him to go along. I do think he has been unduly protracted on the subject matter, but it is proper cross-examination.

Mr. Saypol: With all great respect, I adhere to my view, and, of course, I defer to your Honor's, but I think the record, the nature of the case is such, that I should state my position.

The Court: Very well.

Mr. E. H. Bloch: I don't know whether there is a question before the witness?

The Court: Well, the question is, did you lose any money?

The Witness: I did lose money.

By Mr. E. H. Bloch:

Q. How much?

A. I lost all of the money I originally put into G. & R., plus subsequent loss of money in salaries that I did not get.

Q. And how much did that total, in your mind?

A. Well, I don't know.

Q. Approximately?

A. A few thousand dollars.

Q. Now, is it not a fact that you never recovered a single [fol. 968] penny of that money?

A. I never recovered a single penny of it.

Q. And is it not a fact, Mr. Greenglass, that after you were arrested and after you hired Mr. Rogge, you instructed Mr. Rogge to prosecute a claim against Julius Rosenberg for moneys, as a result of the Pitt Machine Products Co., Inc.?

The Court: You don't mean criminally prosecute, do you?

Mr. E. H. Bloch: No, no, I mean civil, civil.

A. I did.

Mr. E. H. Bloch: That is all, your Honor.

[fol. 969] The Court: Is there any further cross by any other counsel?

Mr. A. Bloch: I believe that my son has fully covered the subject.

The Court: Very well.

Mr. A. Bloch: And I refrain from continuing.

The Court: No cross.

Mr. Kuntz: No cross.

Mr. Cohn: Just a moment, your Honor. I don't know if I will have anything, if I do.

The Court: All right.

(Mr. Cohn confers with Mr. Saypol off the record.)

Redirect examination.

By Mr. Cohn:

Q. By the way, Mr. Greenglass, you told us that you are color blind, is that correct?

A. Yes.

Q. Can you nevertheless distinguish shadings and dark and light?

A. I can do that.

Mr. Cohn: We have nothing further.
The Court: Very well, you are excused.

(Witness excused.)

[fol. 970] The Clerk: Ruth Greenglass.

Ruth Greenglass, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kilsheimer:

Q. Now Mrs. Greenglass, will you keep your voice up so that all the members of the jury can hear you?
A. Yes.
Q. And also counsel can hear your voice. Where do you live, Mrs. Greenglass?
A. 265 Rivington Street.
Q. That is here in New York City?
A. Yes, Manhattan.
Q. And you are the wife of David Greenglass?
A. I am.
Q. Do you know that David Greenglass was named as a defendant in the indictment which is now on trial?
A. I do.
Q. And you know, do you not, that you are named as a co-conspirator but not as a defendant in that indictment?
A. Yes.
Q. Now how long have you been married to David Greenglass?
A. The past eight years.
Q. And do you have any children?
A. Yes, I have two children.
[fol. 971] Q. What are their ages, please?
A. I have a boy of four and a half and a girl of ten months old.
Q. Now will you tell us something about your education, Mrs. Greenglass, where you went to school?
A. I was graduated from Seward Park High School and I took some courses at night at Washington Irving.

Q. And Julius and Ethel Rosenberg, the defendants in this case, are your sister-in-law and brother-in-law, are they not?

A. Yes, they are.

Q. Now do you recall a time when your husband was inducted into the Army?

A. Yes.

Q. And when was that, approximately?

A. In April of 1943.

Q. And are you aware of the time when he was assigned to duty out in New Mexico?

A. Yes, I am.

Q. And when was that?

A. It was in the summer of 1944.

Q. Now I call your attention to the time in November of 1944. Were you at that time planning to go out and visit your husband in New Mexico?

A. Yes, I was.

Q. And what was to be the occasion for that visit?

A. I was going to see him to celebrate our second wedding anniversary.

Q. And on what date is your wedding anniversary?

A. November 29th.

[fol. 972] Q. And did you in fact go out to New Mexico in November, 1944?

A. I did.

Q. Now prior to the time that you—you were living in New York; that is a fact, is it not?

A. Yes.

Q. And prior to the time that you left New York to go to Nex Mexico did you have a conversation with the defendants Julius and Ethel Rosenberg?

A. Yes, I did.

Q. And where did that conversation take place?

A. At their home at 10 Monroe Street, Manhattan.

Q. And about what date did that conversation take place?

A. It was about the middle of November, 1944.

Q. And who was present at the time you had this conversation?

A. Julius and Ethel Rosenberg.

Q. And yourself?

A. And myself.

Q. Now will you state as best you can recollect, the substance of that conversation which you had with the Rosenbergs on that occasion?

A. Yes. Julius said that I might have noticed that for some time he and Ethel had not been actively pursuing any Communist Party activities, that they didn't buy the Daily Worker at the usual newsstand; that for two years he had been trying to get in touch with people who would assist him to be able to help the Russian people more directly other than just his membership in the Communist Party, and he went on to tell me that he knew that David [fol. 973] was working on the atomic bomb and I asked him how he knew, because I had received an affidavit from the War Department telling me——

Mr. E. H. Bloch: I move to strike out the "because".

The Court: All right, strike out "because".

Q. Just tell us what went on in the conversation.

A. I said that I had received an affidavit from the War Department telling me that my mail to David would be censored and his to me, because he was working on a top secret project.

The Court: Madam, could you sit back?

The Witness: Yes, I am sorry.

The Court: And just speak a little slower, please.

The Witness: Yes.

A. (Continued) And he said—I wanted to know how he knew what David was doing. He said that his friends had told him that David was working on the atomic bomb, and he went on to tell me that the atomic bomb was the most destructive weapon used so far, that it had dangerous radiation effects, that the United States and Britain were working on this project jointly and that he felt that the information should be shared with Russia, who was our ally at [fol. 974] the time, because if all nations had the information then one nation couldn't use the bomb as a threat against another. He said that he wanted me to tell my husband David that he should give information to Julius to be passed on to the Russians. And at first I objected to

this. I didn't think it was right. I said that the people who are in charge of the work on the bomb were in a better position to know whether the information should be shared or not.

Ethel Rosenberg said that I should at least tell it to David, that she felt that this was right for David, that he would want it, that I should give him the message and let him decide for himself, and by the—Julius and Ethel persuaded me to give my husband the message and they told me the information——

Mr. E. H. Bloch: I move to strike it out.

The Court: All right, strike out the word "persuaded".

As a result of this conversation you decided to give your husband——

The Witness: I decided to give my husband the message, and Julius Rosenberg told me the things that he wanted me to ask my husband, the information that he wanted me to bring back.

[fol. 975] Q. And what information did he ask you to obtain from your husband if he should be willing to do it?

A. He wanted a physical description of the project at Los Alamos, the approximate number of people employed, the names of some of the scientists who were working there—something about whether the place was camouflaged, what the security measures were and the relative distance of the project to Albuquerque and Santa Fe. Oh—and he told me—I am sorry—he told me also to tell David to be very circumspect not to indulge in any political conversations and to be very careful not to take any papers or sketches or blueprints, not to be obvious in seeking information, to relate to me only what he retained in his memory.

Q. And did you during the course of that conversation agree to relay this message, or did you tell the Rosenbergs whether you would relay this message to your husband?

A. I did.

Q. Now approximately what date did you leave New York to go out to Albuquerque?

A. About the 25th of November, 1944.

Q. Between the time of this conversation which you have just related in the middle of November, and the time that you left to go out to Albuquerque did you see Julius Rosenberg again?

A. Yes.

[fol. 976] Q. And do you recall where you saw him?

A. No, I don't recall where it was.

Q. Do you recall how long after the first conversation which you have related you saw him?

A. It was just a few days later—about two or three days after that.

Q. And what occur-ed on that occasion?

A. Julius gave me $150.

Q. Did he state what the purpose—why he was giving you the money?

A. Well, it was towards the expenses of my trip.

Q. And he told you that?

A. Yes.

Q. I see. Then you left New York at about the 24th or 25th of November to go out to Albuquerque?

A. Yes.

Q. And what means of conveyance did you use to go from New York to Albuquerque?

A. Pennsylvania Railroad.

Q. And when did you arrive at Albuquerque, New Mexico?

A. The 27th or 28th of November, 1944.

Q. And where did you stay during your stay in Albuquerque?

A. At the Hotel Franciscan.

Q. Did you during your stay out there meet your husband?

A. Yes.

Q. And where did you see him?

A. He came to the Hotel Franciscan to meet me.

[fol. 977] Q. And when did you see your husband for the first time, as best you can recall?

A. I think it was a day or two—it was a day after I arrived in Albuquerque.

Q. But was it prior to the date of your second anniversary?

A. Yes, it was.

Q. I see. Now did you have a conversation with your husband in relation to the prior conversation you had had in New York with Julius and Ethel Rosenberg?

A. Yes.

Q. And when did that conversation with your husband take place?

A. Towards the end of his pass.

Q. And how long a pass did he have?

A. I think it was five days.

Q. All right. Now where were you when you had this conversation?

A. We were walking on Route 66—that is, the outskirts of Albuquerque near the Rio Grand River.

Q. Will you state what you said to your husband and what your husband said to you on that occasion in relation to the prior conversation with the Rosenbergs?

Mr. E. H. Bloch: Of course, your Honor, I do not want to object and restate all the grounds; I have made them before.

The Court: To this particular conversation the objection is overruled.

[fol. 978] Q. Will you go ahead?

(Last question read.)

The Witness: Yes. I told my husband that I knew what he was working on, that he was working on the atomic bomb. He asked me how I knew and who had told me. I said that I had been to Julius Rosenberg's house and that he had told me that David's work was on the atomic bomb, and he asked me how Julius knew it and I told him of the conversation we had had, that Julius had said they spent two years getting in touch with people who would enable him to do work directly for the Russian people, that his friends, the Russians, had told him that the work was on the atomic bomb, that the bomb had dangerous radiation effects, that it was a very destructive weapon and that the scientific basis, the information on the bomb should be made available to Soviet Russia.

Q. Did you tell him what you said to the Rosenbergs when they had proposed this to you?

A. Yes. I told him that I had objected to it but that Ethel had told me that David would be interested, that he would want this, that this was right for him, and that I should at least tell him about it, and my husband did not give me an immediate answer; at first he, too, refused, and the following day he told me that he would consent to do this.

[fol. 979] Q. Now, did you inform your husband as to the type of information that Julius Rosenberg had asked you to obtain?

A. Yes, I did.

Q. What did you tell your husband in that respect?

By the Court:

Q. Was that on that first occasion there? Was that on the occasion of your walk with him on Route 66?

A. Yes. Yes, I told him that Julius was interested in the physical description of the project at Los Alamos, the approximate number of people employed there, whether the place was camouflaged, what the security measures were, and the type of work that David himself did, and then my husband gave me the information.

By Mr. Kilsheimer:

Q. When did he give you that information?

A. The following day after our conversation.

Q. Now, will you tell us as best you can recall what information your husband gave you on that following day?

A. Yes. He said that Los Alamos had formerly been a riding academy, that it was forty miles from Santa Fe and about 110 miles from Albuquerque, that the project itself was on the top of a hill and it was secluded; you could hardly see it until you were almost on top of it; that there was a guard at the entrance at all times, and everyone was checked going in and out. He told me the names of [fol. 980] the scientists, Dr. Urey, Dr. Oppenheimer, Kistiakowski, Neils Bohr. David told me that he worked in an experimental shop, that he made models from blueprints that scientists brought in to him.

Q. And did he tell you the approximate number of people who were working at Los Alamos?

A. Yes, he did.

Q. Do you remember now what figure he gave you on that?

A. No, I don't recall.

Q. Now, when your husband related this information to you, did you write it down or what did you do with it?

A. No. I memorized it. He told it to me and then I repeated it to make sure that I remembered all the details.

Q. Did you relate to your husband anything about what Rosenberg had said concerning the method for obtaining the information?

A. Yes.

Q. What did you tell him in that regard?

A. I told him that Julius wanted him to be very careful in getting the information, not to take any papers, not to take any blueprints, not to be obvious in seeking information from other people, and be careful not to get involved in political discussions.

Q. Now, after this period you were with your husband of approximately five days, did you return to New York?

A. Yes.

[fol. 981] Q. And approximately when did you arrive in New York City?

A. About the middle of the first week in December, 1944.

Q. After you arrived in New York City, did you see the defendant, Julius Rosenberg?

A. Yes. He came to my house on Stanton Street.

Q. Approximately when did he come to your house in relation to the time you came home?

A. About two or three days after I arrived.

Q. What was the address on Stanton Street to which Rosenberg came?

A. 266 Stanton Street in Manhattan.

Q. Did you have a conversation with Julius Rosenberg at that time?

A. Yes.

Q. Incidently, was he alone at the time he came up to your apartment?

A. Yes, he was.

Q. Will you state the conversation you had with Julius Rosenberg on that occasion in December, 1944, as best you can recall it?

A. I told him that David had consented to give him the information. He said that he was very pleased, and he asked me to tell him the information that David had sent through me. I repeated what David had told me for him and then he asked me to write it down for him. I wrote it down for him and he waited for the information.

Q. And did you give him the written information?

[fol. 982] A. Yes, I did, and I told him also that my husband was expecting a furlough very shortly afterwards.

Q. And did Rosenberg say anything when you informed him of that fact?

A. Yes. He said that he would see David when he came to New York and would talk to him more fully.

Q. Now, did your husband in fact come to New York shortly after this time?

A. Yes.

Q. Approximately when did he arrive in New York City?

A. On New Year's Day, 1945.

Q. You and your husband stayed at your apartment on Stanton Street?

A. Yes.

Q. Now, after your husband arrived in New York, did you see Julius Rosenberg?

A. Yes. He came to our house on Stanton Street.

Q. When in relation to the time that your husband came home did Rosenberg come to your house?

A. He came one morning two or three days after David had arrived in New York.

Q. It was in the morning?

A. Yes.

Q. Was there a conversation at that time?

A. Yes.

Q. Now, there was just you and your husband and Rosenberg present on that occasion, is that right?

A. Yes.

[fol. 983] Q. What was the conversation that took place in your home at that time?

A. Julius said that he was pleased that David had consented to give him information, and they had a technical discussion about David's work there.

Q. Did you overhear the technical discussion?

A. Yes, I heard it.

Q. Did you understand what they were talking about?

A. No.

Q. After this technical discussion, what was said?

A. Julius invited—Julius said he wanted David to write down any information for him that he had accumulated since I had been to New Mexico and the technical information that I was not able to bring back.

Q. Well now, did your husband write down that information?

A. Yes.

Q. When did he write down the information?

A. That evening of the day that Julius came.

Q. Then, when after your husband had written down the information did he return?

A. He came back the next morning.

Q. What took place? On that occasion he came back to your apartment, is that it?

A. Yes.

Q. What took place there?

A. My husband gave Julius the written information and Julius invited us to come to dinner at his house a few days [fol. 984] afterwards.

Q. Did you go to his house a few days afterwards?

A. Yes, we did.

Q. And who was present when you first arrived at the Rosenberg house a few nights after this conversation in the morning?

A. Julius and Ethel Rosenberg, their son, Ann Sidorovich, and my husband and myself.

Q. Before you go into that, had you had any discussion with Rosenberg prior to that evening concerning whether or not you planned to go to Albuquerque to live?

A. Yes.

Q. When did that discussion take place?

A. That took place in my house the first time that Julius came there.

Q. What was said about that?

A. Well, up until that time the wives of servicemen at Los Alamos were not permitted to live in Albuquerque, but during the time that——

Mr. E. H. Bloch: Is this what Rosenberg is alleged to have said, your Honor, or is this what this witness is alleged to have said?

Q. Did you have a conversation concerning your planned trip out to Albuquerque to live?

A. Yes.

The Court: Just tell us what that conversation was.

[fol. 985] The Witness: Yes. Julius Rosenberg said, "how would you like to go to Albuquerque to live"?

I said that I would be very happy to be near David, and he said, "You are going to go there". Well, we spoke about whether I was going to work there or not and he said that I would probably be able to find a job, but not to worry about the money.

Q. At the time that David gave the written note to Rosenberg in your apartment, was there anything said concerning David's handwriting?

A. Yes.

Q. And what was said?

A. When David gave Julius the handwritten note, I said that I hoped that Julius would be able to read it because David's handwriting was very difficult to understand. He said not to worry, that Ethel would type it, and she was quite used to his handwriting.

Q. You say when you got up to Julius's house for that dinner, Julius Rosenberg, Ethel Rosenberg and Ann Sidorovich were present?

A. Yes.

Q. Had you met Ann Sidorovich prior to that evening?

A. Yes.

Q. I show you Government's Exhibit 3 in evidence and ask you if you recognize the lady in that picture?

A. Yes.

Q. Who is that?

A. Ann Sidorovich.

[fol. 986] Q. Now, did Ann Sidorovich remain in the Rosenberg apartment for that entire evening?

A. No. She was there about a half hour.

Q. Then she left?

A. Yes.

Q. Now, while Ann Sidorovich was present in the apartment, was there a conversation between these five of you people?

A. No. Just the usual pleasantries and playing with the child and talk about ordinary things.

Q. Approximately, if you can recall, what time in the evening did you go up to the Rosenberg's apartment?

A. It was about four or five o'clock in the evening.

Q. Now, after Ann Sidorovich left did you have any conversation with the Rosenbergs concerning Ann Sidorovich?

A. Yes.

Q. What was said by whom?

A. Julius Rosenberg said that he had Ann Sidorovich come to his apartment just so that we would be able to recognize her and she know us when she came out to us to get information to bring back to him, and he spoke at first of tentative plans, that Ann Sidorovich would come to meet me in a theatre in Denver where we would exchange purses, and my purse would have in it the written information that David would give.

Q. Was Ann Sidorovich's husband mentioned during this [fol. 987] conversation?

A. Yes.

Q. What was said concerning him?

A. Well, I asked if her husband knew about what she was doing, and Julius said no, he didn't know, that he would not approve that Ann was it.

Q. During that evening did you have dinner in the Rosenbergs' apartment?

A. Yes.

Q. But Ann Sidorovich had left prior to that dinner, had she not?

A. That is right.

Q. Now, you say there was first mentioned something concerning the fact that Ann Sidorovich would meet you in Denver in a movie theatre, is that right?

A. Yes.

Q. Now, was that settled upon during the evening?
A. Yes.

Q. The place for meeting?
A. That is right, it was.

Q. What was said concerning the meeting place?

A. Well, after he suggested that tentative plan, Julius Rosenberg and my husband discussed the best possible meeting place in Albuquerque, and it was decided to meet in a specific Safeway store.

[fol. 988] Q. Do you know who suggested the Safeway Store?

A. Yes, my husband.

Q. Was it stated that Ann Sidorovich would definitely come out to see you?
A. No.

Q. What was stated concerning the person who would come out to see you?

A. Julius said, "either Ann" or someone else would be the "one to come to Albuquerque to meet you".

Q. What did you say when he said that?

A. Well, I asked him how would we know who the other party was, how would we be able to identify him.

Q. Tell me what occurred then?

A. Well, Julius took the side of a Jello box and cut it in an odd fashion and he gave me one half and he said "This half will be brought to you by another party and he will bear the greetings from me and you will know that I have sent him".

Q. Now, where were you when this Jello box was cut?
A. In their kitchen.

Q. Who was present in the kitchen at that time?
A. Julius and Ethel Rosenberg and myself.
The Court: Where was your husband?
The Witness: He was in the livingroom, out of view of the kitchen.

Q. Do you know which side of the Jello box was cut?
A. Yes, the "Instructions" side.

[fol. 989] Q. I show you Exhibit 4 in evidence and ask you if that resembles the Jello box which was cut in your

apartment—in Rosenberg's apartment in January, 1945 (handing)?

A. Yes, it does.

Q. I show you Government's Exhibit 4-A and 4-B in evidence, and ask you if that corresponds to the side of the Jello box which was cut (handing)?

A. Yes.

Q. In that apartment?

A. Yes.

Q. Now which piece of that cut side was given to you?

A. This side (exhibiting).

Mr. Kilsheimer: Your Honor, the witness is indicating Government's Exhibit 4-A.

Q. Who had the other piece of the Jello box side?

A. Julius held it in his hand.

Q. Now, after this box was cut in the kitchen, what was done with it?

A. Well, the three of us walked into the livingroom and I showed David the half of the Jello box and I told him that Julius had given this to me to identify me to the other party who was going to come to get the information.

Q. And what did David say at that time?

A. David said it was very clever; and Julius said "The simplest things are always clever".

Q. Now, after you had dinner in the Rosenbergs' apartment, was there a discussion between the four of you?

[fol. 990] A. Well, David and Julius had a technical discussion and Ethel and I were talking on the side.

Q. Do you know what David and Julius were talking about?

A. I remember hearing that they were talking about how the bomb was detonated.

Q. Do you remember any of the details of the conversation between Julius Rosenberg and your husband?

A. No.

Q. And you say that while they were talking about technical things, you and Ethel Rosenberg had a conversation?

A. Yes.

Q. What did you say to Ethel Rosenberg at that time?

A. Well, Ethel said that she was tired, and I asked her what she had been doing. She said she had been typing; and I asked her if she had found David's notes hard to distinguish. She said no, she was used to his handwriting. Then she said that Julie, too, was tired; that he was very busy; he ran around a good deal; that all his time and his energies were used in this thing; that was the most important thing to him; that he was away a good deal and spent time with his friends; that he had to make a good impression; that it sometimes cost him as much as $50. to $75. an evening to entertain his friends; and then we spoke further. I said that I expected to be very lonely in Albuquerque; and [fol. 991] Ethel said that I would make friends; that after a while I would probably meet other people there from New York.

Q. Now, was there any conversation at that time concerning whether or not you would work out in Albuquerque?

A. Yes; and the conversation was whether I was going to work before I went out to Albuquerque to live.

Q. Will you tell the Court and Jury what that conversation was?

A. Well, I said——

Mr. E. H. Bloch: Is this the same night?

Mr. Kilsheimer: Yes, this is the same night.

Q. This is on the same evening, is it not?

A. Yes.

Q. With whom were you talking?

A. With Julius and Ethel.

Q. All right. Now will you state the conversation concerning the fact whether or not you would work?

A. I said that I was worried, I had just lost my job and I didn't know how I was going to manage to live until David should find a place for me to live in Albuquerque; and Julius said not to worry about that, that he would take care of my expenses; the money was no object; the important thing was for me to go to Albuquerque to live.

[fol. 992] Q. Did he state anything about whether or not any money would be a loan or not?

A. No—yes, he did. He said that from then on we had

a different understanding; any money that he gave us was a gift; he was not lending it to us; there was no question of returning it.

Q. Incidentally, you told us that before you went out to Albuquerque in November, Julius Rosenberg gave you $150. Do you recall that?

A. Yes.

Q. Did you ever repay that money to Rosenberg?

A. No.

The Court: Did you ever ask Julius Rosenberg where the money was coming from?

The Witness: Yes, later on I did.

The Court: What did he tell you?

The Witness: From his friends.

The Court: Did he tell you who the friends were?

The Witness: Well, in another conversation he did.

The Court: Who did he say they were?

The Witness: The Russians.

The Court: Proceed.

By Mr. Kilsheimer:

Q. Now, did Julius say anything to your husband David [fol. 993] concerning the method by which he should obtain any further information?

A. Yes. He reiterated the same thing; said that David was to be very careful not to seem obvious in seeking information in conversations with other people; not to take—ever take any blueprints or sketches; just to observe what he saw and remember it, as best he could.

Q. Now, was it decided by the end of that dinner meeting where you would meet somebody in Albuquerque?

A. Yes.

Q. And what was the final place where you were to meet somebody in Albuquerque?

A. It was a Safeway store in Albuquerque, on Central Avenue.

Q. Was the date fixed at that time as to when somebody would come out to see you?

A. No.

Q. Now, after the dinner meeting at Rosenberg's house,

do you know whether your husband saw Julius Rosenberg on another occasion?

A. Yes.

Q. When did this other occasion take place?

A. It was a few days after the dinner party.

Q. What took place on that occasion—were you present when your husband met Rosenberg?

A. No, he told me about it when he came home.

Mr. A. Bloch: I object to what she was told.

The Court: He hasn't asked the question yet.

[fol. 994] Mr. A. Bloch: But she started to talk.

The Court: All she said was, "He told me about it when he came home".

Q. Did you see Rosenberg any more during your husband's furlough?

A. I don't recall it.

Q. When did your husband leave to go back to New Mexico?

A. It was toward the end of January, I think it was the 20th, 1945.

Q. When did you leave to join your husband out in New Mexico?

A. The last day in February, 1945.

Q. Now, between the time that your husband left, around the 20th of January, 1945, and the time that you left, the end of February, 1945, did you see Julius Rosenberg again?

A. Yes, he came to my house on Stanton Street.

Q. Who was present at the time when he came up to your house?

A. Myself and my sister, Dorothy Abel.

Q. What is your sister's name?

A. Dorothy Abel.

Q. Now, when was this, as best as you can recall?

A. It was about the first week in February.

Q. Do you recall what was said on that occasion?

A. Yes. Julius came in and we exchanged some conversation, and after a few minutes he asked my sister, Dorothy, to take a book and go into the bathroom; he said [fol. 995] he had something private to discuss with me.

Q. Did your sister do that?

A. Yes, she did.

Q. Incidentally, at that time your sister's name was not Abel, was it?

A. No.

Q. What was your sister's name at that time?

A. Dorothy Prince.

Q. Now, after your sister Dorothy left the room, did you have that conversation with Julius Rosenberg?

A. Yes.

Q. Incidentally, in what room of your apartment was it?

A. We were in the kitchen.

Q. What was the conversation that you had with Rosenberg at that time?

A. Julius told me that in April, the last week in April and the first week in May, I was to go to the store, the Safeway Store that had been designated, and someone would meet me there.

Q. Did he state for what purpose this person would meet you?

A. Yes, to come to get information from David to bring back to him.

Q. You say that you left New York around the end of February, 1945; is that correct?

A. Yes.

Q. When did you arrive in Albuquerque?

A. March 3, 1945.

Q. Where did you stay in Albuquerque during the time you were there?

A. Hotel El Fedel.

[fol. 996] Q. For how long a period of time did you stay there?

A. I stayed there about five days.

Q. Then where did you move to?

A. I stayed at another hotel, in the homes of friends, until I was able to find a permanent apartment.

Q. Where was this apartment that you found?

A. 209 North High Street in Albuquerque.

Q. When did you move into this apartment?

A. At the end of March, 1945.

Q. You said that back in New York, Julius Rosenberg

had told you that someone would meet you, either on the last Saturday in April or the first Saturday in May; is that correct?

A. Yes.

Q. Now, did you meet somebody in front of the Safeway Store on that occasion?

A. No.

Q. Will you state why you did not meet somebody there?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Tell us what occurred that prevented you from meeting him.

Mr. Kilsheimer: I withdraw the question and will put it a different way, your Honor.

Q. Did you take sick some time in April?

A. Yes.

Q. And when in April did you take sick?

[fol. 997] A. On April 18th I had a miscarriage.

Q. Did you live at someone else's house while you were laid up?

A. Yes, I stayed at the home of a friend.

Q. Now, did you inform any member of your family concerning your illness?

A. Yes.

Q. And what did you——

Mr. E. H. Bloch: I move to strike out——

Mr. Kilsheimer: I will connect it up.

Q. By what method did you inform the family concerning your illness?

Mr. E. H. Bloch: Well, if the Court please, I object to this upon the ground that it is pure hearsay.

The Court: I assume it is going to be connected up.

Mr. Kilsheimer: I think the answer to this question will connect it directly, Mr. Bloch.

Mr. E. H. Bloch: You see, I am put in a position where I don't know.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Now, by what method was anybody informed concerning your illness?

A. I wrote Ethel a letter, telling her that I had had a miscarriage and was confined to bed.

[fol. 998] Q. Now, did you receive a response from Ethel Rosenberg—you meant Ethel Rosenberg, did you not?

A. Yes.

Q. Did you receive a response from Ethel Rosenberg in reply to your letter?

A. Yes, I received a letter from her the first week in May.

Q. Do you have that letter now?

A. No.

Q. Have you looked for that letter that you received from Ethel Rosenberg?

A. Yes, I have.

Q. Have you been able to locate it?

A. No.

Q. Now, as best you recall, what did that letter from Ethel Rosenberg state?

Mr. E. H. Bloch: I object to that, under the best evidence rule. I don't think all the prerequisites have yet been outlined, in order to warrant the introduction of secondary evidence.

The Court: What else do you want? She looked for the letter; she hasn't got the letter. She is giving her best recollection of what was contained in the letter.

Mr. E. H. Bloch: May I ask a voir dire question?

The Court: Go ahead.

By Mr. E. H. Bloch:

Q. Did you destroy that letter?

[fol. 999] A. I don't remember what happened to it.

Q. Did anybody else have it besides you?

A. No.

Q. When was the last time you saw that letter?

A. May, 1945.

Q. Did you have it around the house?

A. I have looked for it. I can't find it.

Q. Did your husband see that letter?

A. Yes.

Q. Are you in the habit of destroying mail?

A. Sometimes.

Q. Personal mail, social mail?

A. Sometimes. You can't keep everything you receive.

Q. I am not trying to draw any implications, Mrs. Greenglass, I just wanted to know the fact.

A. Sometimes I did.

Q. Would that refresh your recollection as to whether or not you destroyed that letter?

Mr. Saypol: Wouldn't it be better to frame the question "to keep the letter"? Then there wouldn't be any inference about destroying mail.

Mr. E. H. Bloch: That is what I am trying to get at.

Mr. Saypol: May I address the Court? All it needs is a simple question.

The Court: Proceed.

Mr. E. H. Bloch: I don't know whether she answered my [fol. 1000] last question, your Honor.

The Court: Do you remember whether you kept that letter or whether you destroyed it?

The Witness: I don't remember what happened to it.

Mr. E. H. Bloch: I renew my objection, your Honor.

The Court: Objection overruled.

Mr. E. H. Bloch: I respectfully except.

The Court: Go ahead.

[fol. 1001] Q. Now, will you state as best you can recall what the letter you received from Ethel Rosenberg said?

A. Ethel said that she was sympathetic about my illness and that a member of the family would come out to visit me the last weeks in May, the third and fourth Saturdays.

Q. After you received that letter, did you do anything in connection with the message you received in the letter?

A. Yes, I did.

Q. And what did you do?

A. On the third and fourth Saturdays in May I went in the middle of the afternoon to the designated Safeway store to meet someone.

Q. And did anybody go with you on either of these occasions?

A. The second time my husband went with me.

Q. Did you meet anybody in front of the Safeway store?

A. No, no one came.

Q. Did you have the part of the Jello box which you had received in Rosenbergs' apartment in January of 1950 with you when you went out to Albuquerque?

A. Yes, it was in my wallet.

Q. And you kept that in your wallet at all times?

A. I did.

Q. Now, did you——

The Court: Are you about to go to a new topic?

Mr. Kilsheimer: YEs, your Honor.

[fol. 1001a] The Court: We will recess at this point for lunch, ladies and gentlemen, until 2:20.

(recess to 2:20 o'clock p. m.)

[fol. 1002] AFTERNOON SESSION—2:20 P. M.

(Jury in box.)

RUTH GREENGLASS, resumed.

Direct examination continued.

By Mr. Kilsheimer:

Q. Mrs. Greenglass, going back for just one moment to the letter which you wrote to Ethel Rosenberg concerning your illness, did you mail that letter to Ethel Rosenberg?

A. Yes, I did.

Q. And the letter which you have described you received in reply, you received that by mail also?

A. Yes.

Q. Now, before the luncheon recess, I think we had reached a point where you said that you went on two successive Saturday afternoons to the Safeway Store; do you recall that?

A. Yes, I do.

Q. And you did not meet anybody at that point?

A. That's right.

Q. Do you recall what time in the afternoon it was that you went to the Safeway Store?

A. It was about 1:30.

Q. Did there come a time when somebody did come to see you in Albuquerque?

A. Yes.

Q. When was that?

A. On the first Sunday in June, 1945.

Q. Where were you at that time?

A. I was in our apartment on North High Street.

[fol. 1003] Q. At the time that this person came to see you, had you ever seen the person before?

A. Never.

Q. Was it a man or a lady?

A. It was a man.

Q. Do you now know who that man is?

A. Yes, I do.

Q. And who is he?

A. Harry Gold.

Q. I show you Government's Exhibit 5 and ask you if you recognize this picture (showing to witness)?

A. Yes.

Q. Who is it, please?

A. Harry Gold.

Mr. Kilsheimer: (Showing the witness Government's Exhibit 5).

Q. Who was present at your apartment at the time Harry Gold came?

A. My husband and myself.

Q. Will you tell me just what happened on that occasion?

A. Yes. We had just finished breakfast and someone knocked at the door. My husband opened it and he said he bore greetings from Julius. He came into the apartment and——

Q. Just a moment. Let me interrupt you. Who said he bore greetings from Julius?

A. The man who knocked on the door.

A. Who is now known as Harry Gold?

A. Yes.

Q. All right.

A. He came into the apartment and he produced half the Jello box side. Then my husband went to my wallet and got

[fol. 1004] the other half and they matched them and they fit.

Q. Where was the last time that you had seen the portion of the Jello box side which Harry Gold produced?

A. In Julius Rosenberg's hand.

Q. When was that?

A. On the night of the dinner in November—in January, I am sorry, 1945.

Q. January of 1945?

A. Yes.

Q. You say the two pieces matched?

A. They did.

Q. And the piece which your husband took from your wallet, was that the piece which you had received from Julius Rosenberg on the night of the dinner, in January, 1945?

A. Yes, it was.

Q. Now, what occurred after the matching of the two pieces of the Jello box side?

A. Harry Gold asked my husband if he had the information ready for him, and he said he did not.

Q. Who said he did not?

A. My husband, David. He said he would have to write it down for him. Then Harry Gold said he would come back for it later in the afternoon.

Q. For what length of time was Harry Gold in your apartment on that Sunday morning?

A. About 10 or 15 minutes.

Q. And you said, did you not, that this was the first Sunday in June?

A. Yes, it was.

[fol. 1005] Q. Then did Harry Gold leave your apartment?

A. He did.

Q. What occurred after Harry Gold left?

A. My husband wrote out the information that he had accumulated to send to Julius.

Q. And do you know approximately how many sheets of paper your husband wrote on?

A. Six or seven papers.

Q. Did you see any of that information?

A. I might have looked at it.

Q. Do you know what was contained on those papers?

A. No.

Q. Did Harry Gold return in the afternoon as he said he would?

A. Yes, he did.

Q. What time in the afternoon did he arrive?

A. It was about 2 or 3 o'clock.

Q. Will you tell me who was present when Harry Gold returned?

A. My husband and myself.

Q. What occurred on that occasion in the afternoon?

A. David gave him the written sheets of information and we all spoke for a few minutes and we went out for a walk.

Q. Did Harry Gold give anything to either you or your husband?

A. Yes, he gave David a white envelope that was sealed.

[fol. 1006] Q. It was sealed.

A. Yes.

Q. Then you went out for a walk?

A. Yes.

Q. Where did you walk to?

A. We walked back of the house to the USO.

Q. Was that the three of you walked down there?

A. Yes.

Q. What occurred when you arrived at the USO, that is the Albuquerque USO?

A. That is right. Harry Gold went on and David and I went into the USO.

Q. Harry Gold did not go into the USO with you?

A. No, he did not go.

Q. All right, then after you went into the USO what occurred?

A. We stayed for just a few minutes and then we went back to our apartment.

Q. And when you arrived in your apartment, what did you do?

A. David opened the envelope and he found $500.

Q. Now, what happe--d to that $500.?

A. David gave the money to me and on the next day I deposited $400. in the Albuquerque Trust & Savings Bank

and I bought a defense bond for $50. and the rest I used for household expenses.

Q. Now, did you continue to live out in Albuquerque after this incident in June of 1945?

A. Yes.

Q. Now I call your attention to——

[fol. 1007] The Court: Let me get this clear. You bought a $50. defense bond?

The Witness: Yes.

The Court: For which you paid——

The Witness: Thirty-seven fifty.

The Court: All right.

Q. And then $400. you put in the bank?

A. That's right.

Q. Now, I call your attention to September of 1945; do you recall that in that month David received a furlough from the Army?

A. Yes.

Q. And what did you and David do on that furlough—I mean where did you go?

A. We came to New York and we stayed at my mother-in-law's house, 64 Sheriff Street.

Q. Now did you see Julius Rosenberg during that furlough?

A. Yes.

Q. When did you see him for the first time?

A. The very day after we came to New York, he came to our house.

Q. And what time of day did he come?

A. It was morning, he woke us.

Q. Now, will you tell me what happened on that occasion at your place at 64 Sheriff Street?

A. Julius and David went into the back bedroom and they had a discussion for a few minutes and they came out. [fol. 1008] I was present at the time, and Julius told David that he wanted him to write out the information for him immediately and bring it to his house.

Q. Did you hear the discussion which your husband David and Julius Rosenberg had in the back bedroom?

A. No.

Q. You were not present in the room?

A. No, I wasn't.

Q. Then did Rosenberg leave after he asked David to write this information down?

A. Yes.

Q. And what occurred after Rosenberg left your house?

A. My husband and I had an argument over it. I didn't want him to give——

Mr. E. H. Bloch: I move to strike that out.

The Court: Strike out the "argument".

Q. What did you do? Don't tell us about the argument.

A. I am sorry. My husband and I spoke about it. I did not want him to give the information to Julius. The bomb had already been dropped on Hiroshima and I realized exactly what it was and I didn't feel that the information should be passed on. However, David said that he was going to give it to him again, and before he wrote out the information we went down to eat first.

Q. And where did you go to eat?

A. In my mother-in-law's house.

Q. That is also at 64 Sheriff Street?

A. Yes.

[fol. 1009] Q. Is that right?

A. Yes.

Q. Then after you ate what happened?

A. David wrote out the information and as soon as it was all done he and I went over to Julius and Ethel's apartment at 10 Monroe Street.

Q. Where——

Mr. E. H. Bloch: We cannot hear it.

Q. Will you keep your voice up, Mrs. Greenglass, so that counsel can hear you.

A. I am sorry.

Mr. E. H. Bloch: Before you proceed with the next question, just to protect the record, your Honor, I am objecting to any conversation between this witness and her husband outside of the presence of the Rosenbergs.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. I don't know whether you answered it or not. Where were you when David was writing up the information?

A. I was both in the apartment and downstairs at my mother-in-law's. I went up and down.

Q. Where was David when he actually did the writing?

A. He was in the upstairs apartment at 64 Sheriff Street.

Q. Then you said you went over to the Rosenbergs' house at 10 Monroe Street?

A. Yes, we did.

Q. And about what time of day did you arrive at the [fol. 1010] Rosenberg's house?

A. It was in the middle of the afternoon.

Q. And who was present when you arrived at the Rosenbergs' house?

A. Julius and Ethel Rosenberg and their son, my husband and myself.

Q. Now what occurred in the Rosenbergs apartment on that afternoon in September of 1945?

A. David gave Julius the written information. Julius said he was very pleased to get it and he went into another room to read it over, and after he wrote it he said this had to be gotten out immediately and he wanted Ethel to type it right away.

The Court: After he wrote it?

The Witness: After he read it, I am sorry——

A. (Continuing) And Ethel got out a typewriter and sat down to work on the notes.

Q. On what type of a typewriter was it? I mean, was it a standard model or a portable model or what?

A. It was a portable—I believe it was a Remington.

Q. And where was the typewriter placed?

A. On the bridge table.

Q. All right. Now what occurred after the typewriter was placed on the bridge table?

A. Well, Ethel was typing the notes and David was helping her when she couldn't make out his handwriting and [fol. 1011] explained the technical terms and spelled them out for her, and Julius and I helped her with the phraseology when it got a little too lengthy, wordy.

Q. And approximately how long, do you recall, did it take to type up all this information?

A. I don't recall that.

Q. Do you recall the substance of what was in the notes which were being typed, being read?

A. No, I do not.

Q. Now do you know what happened to the notes which David had brought, notes in his own handwriting?

A. Yes, I do.

Q. What was done to them?

A. Julius burned the notes in the kitchen and then he flushed the ashes in the bowl.

Q. Now while you were home in New York during this furlough in September of 1945 did you receive any money?

A. Yes, we did.

Q. And from whom did you receive the money?

A. Julius Rosenberg gave my husband $200.

Q. And what did your husband do with that money?

A. He gave it to me.

Q. Were you present when Rosenberg gave him the money?

A. I don't recall.

Q. Now, after the furlough was completed where did [fol. 1012] you and your husband go?

A. We went back to Albuquerque.

Q. And for what length of time did you remain in Albuquerque?

A. Until the first week of March, after his discharge when we came back to New York.

Q. Now let me go back for just one moment. While Ethel Rosenberg was typing the notes was anything done in the room with respect to the equipment in the room, do you recall?

A. No, I don't.

Q. After David was released from the Army, at the end of February 1946, I believe you said it was?

A. Yes.

Q. (Continuing) Where did you go?

A. We came back to New York.

Q. And where did you stay when you returned to New York?

A. We stayed at his aunt's apartment at 64 Sheriff Street.

Q. And did you stay any place else?

A. Yes. For a period of about 10 days we stayed in Julius and Ethel's apartment at 10 Monroe Street.

Q. Was anything said in connection with your staying at that apartment?

A. Yes.

Q. At 10 Monroe Street?

A. Yes. They were going away and they said that they wanted us to stay at their apartment in case any important mail or telephone calls were to be received.

[fol. 1013] Q. And did you stay in their apartment for that period of about 10 days?

A. We did.

Q. And then when did you move to your apartment on Rivington Street where you went to live?

A. I think it was the first week in May 1946.

Q. Now, from time to time during the years 1946, 1947 and 1948 did you and your husband visit the Rosenbergs at their apartment?

A. Very infrequently.

Mr. A. Bloch: What is the answer?

(Answer read.)

Q. But you did visit them from time to time?

A. Yes.

Q. Now, on any of those visits did you notice any particular piece of furniture in the Rosenberg apartment?

A. —.

Q. When was this, as best you can recall?

A. I think it was 1946.

Q. And what piece of furniture did you notice?

A. Mahogany console table.

Q. Did you have a conversation with the Rosenbergs concerning that table?

A. Yes, I did.

Q. And was your husband also present?

A. I think he was, yes.

Q. Now will you tell us what that conversation was in connection with this console table as best you can recall it?

A. I admired the table and I asked Ethel when she bought [fol. 1014] a new piece of furniture; she said she had not bought it, she had gotten it as a gift and I said it was a

very nice gift to get from a friend, and Julius said it was from his friend and it was a special kind of table, and he turned the table on its side to show us why it was so special.

Q. And what did he show you when he turned the table on its side?

A. There was a portion of the table that was hollowed out for a lamp to fit underneath it so that the table could be used for photograph purposes, and he said when he used the table he darkened the room so that there would be no other light and he wouldn't be obvious to anyone looking in.

Q. And did Julius Rosenberg tell you what he photographed using the table?

A. Yes. He took pictures on microfilm of the typewritten notes.

Q. Now shortly after you returned to New York, after David's discharge from the Army, did you have a conversation with Julius Rosenberg concerning the fact that David had left work at Los Alamos?

A. Yes.

Q. Now where did that conversation take place?

A. I think it was in my mother-in-law's house on Sheriff Street.

Q. Can you fix the time of this conversation as best you can recall?

[fol. 1015] A. It was after we were in New York about two or three weeks, I think.

Q. Now what was the conversation that you had—strike that; withdraw that.

Who was present during that conversation?

A. David and Julius Rosenberg and myself.

Q. Now what was said on that occasion?

A. David mentioned that he had been offered a job to return to Los Alamos as a civilian at a very nice salary, and Julius asked him if he had accepted and David said, "No", and Julius said that he was very displeased, that David should have continued to stay there because he would have access to valuable information.

[fol. 1016] Q. What did David say, if anything, to that?

A. David said that he did not want to go back and he was no longer interested in furnishing the information.

Q. Do you recall any conversation that you had with Julius Rosenberg concerning education?

A. Yes.

Q. Did you have more than one conversation on this subject?

A. We had several.

Q. When did these conversations take place?

A. Intermittently, from 1946 to 1949.

Q. Do you remember where you had these conversations?

A. They were usually in my house.

Q. Without telling me yet what the conversations were, were they along the general line where this subject was mentioned?

A. Yes.

Q. Will you tell us what was said concerning education?

A. Julius wanted David to go to school, to get a complete college education. He said that David could go during the day, so that he could really be able to apply himself. He wanted David to study nuclear fission. We stalled him with one excuse or another; said it was a question of money; we had a child to take care of. He said money was not the question involved, that if we needed $75. a week or a hundred dollars a week to live on, we would get it; that he always took care that the students got their expenses first; that it was the most important thing as far as the Russians [fol. 1017] were concerned.

Q. Did Julius Rosenberg tell you where he got the money, the $75. or $100. a week, if it were needed?

A. From the Russians.

Q. Do you recall what occupation your husband followed after he came back from the Army?

A. He was a machinist.

Q. With whom did he work?

A. He went into business right after his discharge.

Q. With whom?

A. With Julius Rosenberg, with his brother Bernard and with a fourth partner, Isidore Goldstein.

Q. What was the name of the business that he went into?

A. G. & R. Engineering Company.

Q. Did there come a time when that business changed its name?

A. It changed its name and the fourth partner.

Q. When was that?

A. It was, I believe, in the fall of 1947.

Q. What did the name of the business become at that time?

A. Pitt Machine Products, Incorporated.

Q. And for what length of time did David remain with that company?

A. Until the summer of 1949.

Q. Then where did he go to work?

[fol. 1018] A. He went to work for the Arma Corporation.

Q. That was in Brooklyn?

A. Yes.

Q. Now, coming up to the year 1950, do you recall a conversation with Julius Rosenberg concerning whether or not you should leave the country?

A. Yes.

Q. Where was the first conversation, that you recall, on this subject, when you were present?

Mr. E. H. Bloch: Will you fix the time?

Mr. Kilsheimer: I will.

A. It was on May 24, 1950, in my house on Rivington Street.

Q. Who was present on that occasion?

A. Julius, my husband, my two children and myself.

Q. Will you tell us the conversation that was had at that time?

A. Yes. Julius came in with a copy of the Herald-Tribune of that morning and it had a great big picture in it of Harry Gold, and he said, "This is the man who came to you in Albuquerque"; and David and I said it was not, we didn't recognize him; and he said, "You can take my word for it, this is the man who came". He said, "You will be the next to be picked up".

Q. To whom did he say that?

A. To David. He said, "The next arrest will probably take place between June 12th and June 16th; you have to get out of the country before then".

[fol. 1019] Q. What did you say when Rosenberg told you that you would have to leave the country?

A. I said, "We can't go anywhere. We have a 10-day old infant"; and Julius said, "Your baby won't die. Babies are born on the ocean and on trains every day". He said, "My doctor said if you take enough canned milk and boil the water, the baby will be all right".

Q. Did Julius Rosenberg tell you where you should go?

A. Yes.

Q. Where did he tell you that you should go to?

A. To the Soviet Union.

Q. Was anything else said concerning arrangements for leaving?

A. Yes. He gave my husband a thousand dollars. He said, "Buy everything you need. Don't be too obvious in your spending. You have a month to spend it in, and I will bring you more". He said, "Leave all your household effects. Just take your clothing and what you need for the children and leave".

Q. Was anything else said concerning arrangements for leaving?

A. Yes. Julius asked me if I could get a certificate from the doctor, stating that we had all been inoculated against smallpox. I said that I would not ask the doctor for a falsified statement. He said, "That is all right, I will take care of it. My doctor will give it to me".

[fol. 1020] Q. After this conversation what happened?

A. He asked David to go down with him for a walk. He said he had something further to talk to him about; and David and he left.

Q. What did you do with the——

By the Court:

Q. Was there any discussion at that time as to the means that you would use to get to the Soviet Union?

A. Well, when he and David went for a walk, he outlined a plan for David to leave.

Q. He didn't do that in your presence?

A. No. Then David came back and told me about it.

By Mr. Kilsheimer:

Q. Concerning the thousand dollars which Rosenberg gave you on that day, what did you do with that thousand dollars?

A. We put it in a metal closet and we used it to pay household debts and expenses.

Q. Was any part of that money put in the bank?

A. Yes, $500. deposited in the Manufacturers Trust Company.

Q. Incidentally, when was your baby born in May of last year?

A. May 16, 1950.

Q. For what length of time were you in the hospital after you had the baby?

A. I was in the hospital six days after the baby was born. [fol. 1021] Q. After David and Julius Rosenberg had the walk, went for a walk that afternoon, did you do anything with respect to leaving the country?

A. No. We never intended to leave.

Mr. E. H. Bloch: I move to strike out the latter part of the answer.

The Court: I will strike out that part of it.

Q. Did there come a time when you had some pictures taken?

A. Yes.

Q. When was that as far as you can recollect?

A. May 28, 1950.

Q. For what purpose were those pictures taken?

A. For passports to give to Julius so that he would think we were leaving.

Mr. E. H. Bloch: I move to strike out "so that he would think we were leaving".

By the Court:

Q. The pictures were taken for passports?

A. Yes.

Q. Did Julius ask you to take those pictures?

A. Yes.

Q. Did he ask you to turn the pictures over to him?

A. He did.
Q. Do you remember how many sets he said he wanted?
A. Yes.
Q. How many sets?
[fol. 1022] A. He wanted five sets, five photos.
Q. Did he tell you why he wanted the pictures?
A. Yes.
Q. For what purpose?
A. For passports.

Mr. E. H. Bloch: If your Honor please, there is a motion before you.

The Court: Yes. Those words "so that he would think" are stricken.

Mr. Saypol: May I be heard on that for a moment?

The Court: No, no.

Mr. Saypol: Presumably that is the conversation, if your Honor please.

The Court: That is not a conversation, so that he would think.

Mr. Saypol: It can be cleared up.

The Court: I think it is perfectly clear by my question. That was the purpose of my question.

By Mr. Kilsheimer:

Q. I show you Government's Exhibits 9-A and 9-B and ask you if you recognize thos- pictures?
A. Yes.
Q. Are those copies of the passport pictures which you had taken?
A. Yes, they are.
Q. How many sets of pictures did you have taken?
A. Six sets.
[fol. 1023] Q. What did you do with those six sets?
A. We gave five to Julius and I gave the sixth set to the FBI.
Q. When was the subject of your leaving the country again raised between yourselves and Julius Rosenberg?
A. He came on Memorial Day to pick up the pictures from my husband and he told him to get ready to leave.
Q. Then when did you after Memorial Day see Rosenberg again?

A. He came on June 4th to our house.

Q. Now what took place at that time?

A. He gave my husband a package wrapped in brown paper and he said it was $4000., that there would be more money available in Mexico when we got there.

Q. What did you do with the $4,000.?

A. We put it in the chimney in our fireplace and afterwards my husband gave it to my brother-in-law.

Q. Did Rosenberg on that occasion tell you when you would have to leave the country?

A. He told us that we would have to leave sooner than expected, that they were closing in and getting ready to make an arrest.

Q. Now, did you see Rosenberg after June 4th?

A. Yes.

The Court: Excuse me.

[fol. 1024] By the Court:

Q. Did you ask him on that occasion anything about what he intended to do? Whether he intended to leave the country?

A. Yes.

Q. When was that? That day or——

A. On May 24th.

Q. On May 24th?

A. Yes.

Q. Just what did you say to him and what did he say to you?

A. I asked him what he was doing. He said he was going too, that he would not leave at the same time, and he would meet us in Mexico. We would see him there, and I asked him what Ethel thought about it and he said Ethel didn't like the idea of it herself but she realized it was necessary and they were going to go.

By Mr. Kilsheimer:

Q. Now after that time you saw Rosenberg on the 4th of June did you see him again?

A. Yes.

Q. When did you see him on the next occasion?

A. About three days later.

Q. And where did you see him?

A. He came to our house.

Q. And what occurred on that occasion?

A. He came and spoke in whispers. He said he thought he was being followed and that he was going to bring $2000. more but he didn't because he was being extra careful.

Q. Now, do you know when your husband David was [fol. 1025] arrested by the Federal officers?

A. Yes.

Q. Approximately when was that?

A. About the middle of June, 1950.

Q. After your husband was arrested did you see Ethel Rosenberg?

A. Yes.

Q. When did you see her?

A. In the middle of July 1950.

Q. And where did you see her on that occasion?

A. She came to my mother-in-law's house to see me.

Q. Will you tell me what occurred on that occasion?

A. Yes. Ethel came with pie for me and gifts for my son, and after we talked in my mother-in-law's house for a few minutes she asked me would I please go out and walk with her. We walked around the block several times and she said her counsel advised her to see me personally and get assurances from me that David would not talk. She said it would only be a matter of a couple of years, and in the long run we would be better off; that Julius had been picked up by the FBI for questioning. He said he was innocent and that he had been released; that she had no doubt that he would probably be picked up again. He would continue to say he was innocent. That if David said he was innocent and Julius said he was innocent, it would strengthen their position; everybody would stand a better chance, and she said do you think it is a dirty shame for [fol. 1026] David to take the blame and sit for two?

Mr. E. H. Bloch: Is this alleged to have been said by Ethel Rosenberg?

The Court: Correct.

Cross-examination.

By Mr. A. Bloch:

Q. Mrs. Greenglass, do you recall the occasion when the FBI man called at your home in the month of February, 1950?

A. Yes, I do.

Q. And were you present with your husband when he talked to that FBI man?

A. I was at the house at the time, yes.

Q. And did you hear anything that was said between your husband and the man who called?

A. Yes.

Q. How long did the FBI man stay in your house at that time?

A. Close to an hour.

Q. And he left?

A. Yes.

Q. Were you frightened by the call of that FBI man?

A. Yes.

Q. You were frightened because you knew you had committed a crime?

A. No.

Q. Did you then realize that you had committed a crime?

A. No.

Q. Do you realize today that you had committed a crime?

A. I don't know what is legally a crime. I don't think [fol. 1027] I am in a position to say.

Q. Do you think that acting as a spy against the interests of the United States is a crime?

A. I think it is wrong.

Q. It is wrong?

A. Yes.

Q. When did you first realize that it was wrong?

A. I have always known it was wrong.

Q. From the very inception of your participation in it, is that right?

A. I don't think——

Q. Answer the question. You don't understand the question?

A. No.

(Question read.)

Mr. Saypol: That question is bad as to form, if the Court please.

(Question read at request of Court.)

The Court: I think the last part is vague.

Mr. A. Bloch: I except to your Honor's ruling.

The Court: Well, until you rephrase it. You may probe the subject matter just rephrase it.

Q. When you spoke to your husband in Los Alamos at the end of November 1944 and transmitted the message that you claim you were to transmit to him about transmitting information, did you think that that was wrong on your part?

Mr. Kilsheimer: Just a moment. I think Mr. Bloch said [fol. 1028] when she spoke to her husband at Los Alamos. I think the testimony is not that she spoke to him in Los Alamos. It was Albuquerque.

The Court: That is correct.

Mr. A. Bloch: I will reframe it.

The Court: You need not reframe it. Just substitute Albuquerque.

A. Yes, I did.

Q. And you nevertheless kept on participating in whatever your husband did?

Mr. Saypol: Just a moment. That is rather broad too.

The Court: Yes, that question is too general.

Mr. A. Bloch: Exception.

Q. You did receive certain information from your husband, did you not?

A. I did.

Q. And after you received the information from your husband you came to New York?

A. Yes.

Q. And you gave that information to Mr. Rosenberg?

A. Yes.

Q. You know that you were committing a crime by doing that?

A. I didn't think it was right.

Q. You knew it was wrong?
A. Yes.
Q. You nevertheless continued to participate in all the things you have testified to on your direct exami-
[fol. 1029] nation?
A. Yes.
Q. And are you aware of the fact that you are mentioned in this indictment which is being tried today as a co-conspirator?
A. Yes, I am.
Q. And have you admitted to the authorities that you did what you were charged with doing?
A. I have.
Q. Now, did these facts about your taking part——

Mr. Saypol: Will you just bear with me for a moment? The question again is ambiguous: The things that you are charged with? I don't know what Mr. Bloch means by that.
The Court: I will overrule the objection.
Q. Do you know what you were charged with in the indictment?

Mr. Saypol: Once again——
The Court: I overruled the objection.

Q. Now, did the fact that you did something wrong have anything to do with your being frightened when the FBI man came to your house in the middle of February, 1950?
The Court: Well now, that I don't understand.

(Question read at the request of the Court.)

The Court: Did something wrong prior to that visit in February, 1950?
Mr. A. Bloch: Yes.
[fol. 1030] The Witness: No.

Q. Why were you frightened?
A. I think everyone is apprehensive when the FBI interviews them.
Q. Generally?
A. Yes.
Q. You didn't worry about any danger of being discovered in having done something wrong?

A. I didn't think that was his purpose.

Q. This had nothing to do with your fright?

A. No.

Q. Did you talk the visit of this FBI man over with your husband?

A. Yes.

Q. And did either of you say to the other that the FBI man might have come here to investigate the things we did in connection with the Los Alamos Project?

A. I don't recall that.

Q. You have no recollection of that?

A. No.

Q. You have a pretty good memory haven't you?

A. In some things.

Q. Now then, in the month of May 1950 were you ever told by your husband that he was being followed?

A. No.

Q. Were you ever told by anybody that you were being followed?

A. Well, we suspected it later on but nobody told us.

Q. Nobody told you?

A. No.

[fol. 1031] Q. Now, on May 24, 1950 when Rosenberg came to your house and told you and your husband that Harry Gold had been arrested and that you and your husband had to leave the country, were you frightened?

A. I was.

Q. And did you then realize that the FBI might pick your husband up?

A. I did.

Q. And you?

A. I guess so.

Q. Now, did you then discuss with your husband as to what you were to do in the event of your being picked up or your husband being picked up?

A. No.

Q. You didn't want to leave the country, did you?

A. No.

Q. And your husband didn't want to leave the country?

A. No.

Q. And you were to remain here in New York?

A. We planned to go to the Catskills and wait.

[fol. 1032] Q. You planned to remain in this country?

A. Yes.

Q. And didn't it ever occur to you that something would have to be done by you and your husband in the event of your being arrested?

A. Yes.

Q. Did you consult a lawyer?

A. No.

Q. Well, did you talk over with your husband and make any plans as to what you were to do when you were arrested?

A. I didn't think the FBI wanted my husband.

Q. And did you think that the FBI wanted you?

A. No.

Q. Did you think at that time that the reason the FBI didn't want your husband was because he didn't do anything wrong?

A. No.

Mr. Kilsheimer: I object to the question.

The Court: The question was answered; the answer is "No".

What was the reason why you thought he did not want you to go—that the FBI did not want your husband?

The Witness: I thought the FBI was leading to somebody other than my husband, that they wanted somebody much more important than he.

Q. And did you think your husband could lead the FBI to some other person?

[fol. 1033] A. We weren't leading anyone.

Q. You just said that you did not think that your husband was going to be arrested because he could lead to someone else?

A. Yes.

Q. So you were talking about your husband leading to somebody else?

A. I don't mean it that way.

The Court: How do you mean it?

Q. What did you mean when you answered my question?

A. Well, we weren't going around and leading the FBI to anybody else. I thought that they wanted someone with

whom my husband had been involved who was more important than he, who had been involved more deeply than he.

Q. So you thought your husband would go scot free because he could lead to someone else?

A. I didn't think so but I didn't want my husband ever to be arrested.

Q. Did you think that your husband would never be arrested?

A. I hoped he wouldn't.

Q. And the same hope was applicable to you?

A. Yes.

Q. Did you at any time for years prior to June 1950 worry about this thing that you had done and the thing that your husband had done?

A. Yes.

Q. Were you afraid of punishment?

[fol. 1034] A. I was afraid of the story coming out.

Q. You were afraid of the story coming out?

A. Yes.

Q. Well, were you afraid of being punished when the story came out?

A. I don't believe I thought of it that way.

Q. You weren't afraid at all?

Mr. Saypol: She hasn't answered that way, if the Court please.

Mr. A. Bloch: I am asking her.

Mr. Saypol: It was a responsive answer.

The Court: No, the answer is responsive. She said she never thought of it.

Q. You never thought of your husband being arrested?

A. Well, I was so much against it I had hoped very much it wouldn't happen. I didn't let myself think it would.

Q. Well, did you ever talk it over with your husband and tell your husband "In the event of your being arrested or my being arrested, we are going to go to the District Attorney and tell him certain things which will lead to somebody else"?

A. I told my husband in 1946——

Q. Will you answer my question, please.

A. Yes, I will. I told my husband in 1946 that I wanted

to go to the FBI with the story. However, there had been [fol. 1035] nothing happening, everything was very peaceful and we thought perhaps it would die down and the thing would never come to light, so we did nothing about it.

Q. You did not go to anybody?

A. No.

Q. You did not report it to any authority?

A. No.

Q. And you were at peace and calm about it?

A. I was not calm.

Q. Well, what was the cause of the absence of calm on your part?

A. It's not easy to live with something that you know is wrong.

Q. Well, when you say you know it's wrong, was it wrong in your opinion morally?

A. I felt that we had taken something into our hands that we were not equipped to handle with, we were tampering with things that were beyond our knowledge and understanding, yes.

Q. And you realized that in 1946?

A. I realized it in 1944.

Q. And you kept on doing what you said you did?

A. I have told the truth about what I did.

Q. How did you think that you were violating the law by doing what you did in 1944, 1945 and in 1946?

A. I don't know very much about law.

Q. Did your husband ever tell you that the thing he was [fol. 1036] doing and the thing you were doing, that is, spying, was a crime?

A. We didn't discuss it from that standpoint.

Q. Never discussed it at all?

A. Oh, we discussed it but not that way.

Q. In what way did you discuss it?

A. Well, I had felt that it was wrong; I didn't think that he should have done it to begin with but my husband felt he wanted to and as his wife I went along with him.

Q. You thought that way right from the beginning?

A. That's right.

Q. You took $150., thinking that way?

A. I didn't take the $150. because of that.
Q. You did not?
A. No.
Q. Well, didn't you tell us that you got $150. from Rosenberg before you left——
A. Yes.
Q. —in November 1944?
A. Yes.
Q. And didn't you tell us——
The Court: Excuse me, Mr. Bloch——

(To Witness): For what purpose?

The Witness: Julius was my relative. He said to "Go to Albuquerque and I am giving you this to meet your expenses", and I accepted it in the same light.
[fol. 1037] Q. Now, your husband was inducted in the Army in April 1943?
A. Yes.
Q. And where was he stationed immediately upon his induction?
A. I think it was the Aberdeen Proving Grounds.
Q. How long was he there?
A. I don't remember.
Q. Was it a month, two or three?
A. It was a few months.
Q. Did you go to visit him over there?
A. No, I went to California——
Q. Where was he transferred to after that?
A. California.
Q. Where? What particular camp?
A. I don't remember the name of the camp. He was stationed right outside of Pomona. I was there.
Q. How long did he stay there?
A. I don't remember how long he was there. I think I was there for three months.
Q. During what year?
A. 1944, beginning of 1944.
Q. What month?
A. I think I left New York in February of '44.
Q. And you went and stayed with your husband for three months?

A. That is right.
Q. You lived with him there?
A. Yes.
[fol. 1038] Q. Nobody gave you any money to go there, in the early part of 1944; that was your own money you used in going there?
A. The money that I got in 1944—later in 1944——
Q. I am not talking about later in 1944.
A. All right, I will answer it. You are right, yes.
Q. I am talking about the beginning of 1944, when you went to Aberdeen, is it?
A. No, California.
Q. California. You went there from New York?
A. Yes.
Q. At your own expense?
A. That is right.
Q. And you lived with your husband over there?
A. Yes.
Q. For three months?
A. I worked there.
Q. And you worked there?
A. Yes.
Q. Then you came back to New York?
A. Yes.
Q. Is that the only time you went to see your husband after his induction and before your visit to him at the end of November 1944?
A. That is right.
Q. Now, in spite of the fact that you thought you had done something wrong and it was bothering you, did you take any more money from your husband?
A. Yes.
The Court: From her husband, you say?
[fol. 1039] Mr. A. Bloch: Yes, it was given—the testimony is that the husband——
The Court: Oh, yes.
Q. When was the next payment that you got from your husband, or moneys that were turned over by your husband to you?
A. I am not sure. I think it was January '45.
Q. January '45?

A. I am not sure. Either that or June was the next one.

Q. Now, when did you get the $500.?

A. In June of 1945.

Q. And you had received some money in January 1945?

A. I am not clear on that.

Q. Well, try to give us some information about these payments that were made and turned over to you.

A. I am sorry, I am hazy. I don't remember whether I did or not.

Q. You are a little confused now, aren't you?

A. I am not confused. I just don't remember it.

Q. Well, do you feel too excited to tell us the story?

A. No.

Mr. Saypol: That will be objected to.

The Court: Now, Mr. Bloch, I think she hasn't been excited.

Mr. A. Bloch: I am going to suggest, in case she is, to [fol. 1040] calm down.

The Court: She has been a calm witness. Let's not be too solicitous.

Q. Do you remember the payment of $500. that you received?

A. I do.

Q. Where was that turned over to you?

A. In Albuquerque, New Mexico.

Q. And you knew that that $500. was paid to your husband by Gold?

A. From Julius.

Q. And you knew that that was compensation for spy work?

A. That was the first time I knew it.

Mr. E. H. Bloch: Pardon me. I am awfully sorry. This may be an unusual procedure, but I move to strike out the words "From Julius" in response to the question before the last, upon the ground that it is superfluous and not responsive.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. A. Bloch: Will you repeat that question?

(Question and answer read.)

Q. Is that right?

A. That is right.

Q. And you say that is the first time you knew of it?

A. Yes.

Q. That is the first time you knew that your husband was being paid?

A. No, I was under the impression at first that Julius [fol. 1041] said it was for scientific purposes we were sharing the information, but when my husband got the $500, I realized it was just C. O. D.; he gave the information and he got paid.

Q. That is what you meant by saying "the first time you knew of it"?

A. That is right.

Q. Now, going back to January 1945 you said something about the money that you received then.

A. No, I said I wasn't sure.

Q. What money are you referring to?

A. I said I wasn't sure whether we had received any.

Q. Well, how many payments do you remember having received from your husband, which when turned over to you was told by your husband to be payments for spying?

A. You mean before 1950?

Q. No, from 1944 down to date.

A. There was 1945, in June, when it came from Gold; September, when Julius gave David money, when he was in on furlough; in 1948, Julius gave David money. Whether there was any before that——

Q. How much was that?

A. $800.

Q. Where was that given?

A. That was given to David during the summer. I don't know where it was given. I was not here.

Q. Where was it given, did you say?

[fol. 1042] A. During the summer. I don't know where.

Q. Where, where?

A. Mr. Bloch, I was in Monticello. My husband was in New York.

Q. But your husband told you that he had received $800. from Rosenberg; is that the idea?

A. That is right.

Q. And your husband turned that $800., you say, over to you?

A. No, he deposited it in the bank in New York.

Q. You knew it was deposited in the bank?

A. Yes.

Q. He told you all about it, did he not?

A. He did.

Q. Now, when you reecived the $500. in June, on June 3rd I think you said, 1945——

A. I said it was the first Sunday. I don't remember the date.

Q. You took that money and took $400. of it and deposited it in a bank; you bought a Savings Bond, did you say?

A. That is right.

Q. For $50. and the rest you spent, and you were still worried that you had done something wrong?

A. Yes.

Q. But you did with the money as you testified?

A. The money wasn't——

The Court: We are getting a little repetitious. Of course, she did with the money what she testified to.

Q. Now then, coming back to May 24, 1950, did your husband and you at any time before the 15th of June, when [fol. 1043] your husband was arrested, make any plans as to what you were to do in the event of his being arrested?

A. We had planned to tell the truth.

Q. I am sorry. You have to speak up.

A. We had planned to tell the truth.

Q. And you planned—you went over the facts, did you not?

A. No, I knew the facts.

Q. You did. You had never gone over those facts with anybody up to that time, I mean the details about your conversation had before leaving New York in November 1944, the conversation you had with your husband at Albuquerque in November 1944, or the first part of December, 1944, you had never gone over those facts with anybody?

A. You mean before I went to the federal authorities?

The Court: Yes.

A. No, never.

Q. Never did. Did you ever keep any memoranda, in which you jotted down any of the details that you have narrated here on the stand, either at the time these things occurred, or at any time afterwards, up to June 1950?

A. No.

Q. But you remembered every detail from memory?

A. Yes.

The Court: She remembered. I don't know about [fol. 1044] "every detail". I think that question is objectionable. She remembered what she testified to.

Mr. A. Bloch: Yes.

Q. Well, you testified, for instance, just what Julius said to you in the middle of November 1944——

A. Yes.

Q. —in detail; didn't you give us the entire conversation?

A. I testified to everything I remember. It was a long time ago.

Q. There might have been other things said?

A. Nothing I eliminated purposely. I gave you everything that I can remember to date.

Q. All right. Now, will you kindly tell us again what was said at that conference.

A. Yes.

Q. Go ahead, start right from the beginning.

The Court: Which conference was that?

The Witness: The conference in November, he said.

Q. The middle of November 1944.

A. Yes. Julius said that I might have noticed that he and Ethel had not been openly participating in any Communist Party activities; that they hadn't been buying the Daily Worker at their usual stand. He told me that David was working on the atomic bomb; that the atomic bomb had dangerous radiation effects; that it was the most destructive weapon used to date; that Britain was work- [fol. 1045] ing with the United States on this project; that the information had not been shared with the Soviet Union; that he felt that for scientific purposes it should be shared with the Soviet Union, so that one nation couldn't use the weapon as a threat against another; and he told me the

type of information he wanted me to get from David; that David would consent to pass it on—do you want that, too?

Q. Give us the whole conversation.

A. All right. He said that he wanted a physical description of the project at Los Alamos and the approximate number of people working there; who the prominent scientists were; how the place was camouflaged; what the security measures taken were; what David's work in particular was and the distance of the project from Santa Fe and Albuquerque.

Q. Now let me ask you; Did you at any time before you took the stand today read any part of what you just now told us in any paper or any document?

A. I read it in the statement that I signed for the federal authorities, when I signed it.

Q. And you memorized it?

A. I never memorized it. I knew it too well.

Q. Well, are you aware of the fact that the narrative you just gave us is almost identical with the verbiage used [fol. 1046] on your first giving of the testimony of that particular occurrence?

A. No, I am not.

Mr. Saypol: Just a moment. I appreciate so expert an opinion as to the accuracy of the witness's recollection, but I object to the form of the question.

The Court: Your objection is sustained. I don't know exactly what the point is. If the witness had left out something, Mr. Bloch would say that the witness didn't repeat the story accurately. And the witness repeats it accurately, and apparently that isn't any good.

Mr. A. Bloch: What I am referring to is the verbatim repetition of the verbiage.

The Court: Well, we don't know that it is verbatim. We haven't had the record yet.

Mr. A. Bloch: Well, it is a matter, of course, of comparing the testimony after we get it written up.

The Court: Mr. Bloch asked the question; the witness has answered.

Mr. A. Bloch: Very well.

Q. Now then, it was all planned that as soon as your husband would be arrested he would tell, as you say, the truth?

A. We had no plan. We discussed what would happen if he were arrested and what would happen if he weren't. We had no plan.

[fol. 1047] Q. Well, I call it "a plan"; you call it just that you were going to tell the truth; is that the idea?

A. That is right.

Q. And you never went over any of these details with your husband?

A. It wasn't necessary.

Mr. A. Bloch: I move to strike that out.

The Court: Strike it out.

Q. You did not go over the details with your husband?

A. I did not.

Q. You weren't surprised when your husband was arrested, were you?

A. I was.

Q. When did you first hear that your husband was arrested?

A. When I was in the hospital on June 16th.

Q. Same day?

A. Well, I was told the day after he had been picked up.

Q. That was about the 16th of June?

A. It was on the 16th.

Q. On the 16th, that is the time you found out that your husband had been arrested?

A. No, he hadn't been arrested until later that afternoon.

Q. I am sorry, I couldn't hear that answer.

The Court: Read that back, please.

(Answer read.)

Q. When did you hear of it?

A. In the morning.

[fol. 1048] Q. The day after?

A. On the morning of June 16th, the day after he had been picked up.

Q. How long were you in the hospital after June 16th?

A. I left on June 16th.

Q. The day after he was arrested?

A. No.

Q. Well, I understood that he was arrested on the 15th of June.

A. He was picked up on the 15th of June. The arrest came through on June 16th.

Q. Well, after the FBI people came and took him away from your home, you found that out the day after?

A. That is right.

Q. And that is the day you came out of the hospital?

A. That is right.

Q. Did you hire Mr. Rogge?

A. No.

Q. Were you present at the time Mr. Rogge was hired?

A. I was in the hospital.

Q. Who hired Mr. Rogge?

A. My brother-in-law, Louis Abel.

Q. And do you know when he was hired?

A. June 16th, 1950.

Q. When were you told about it?

A. My brother-in-law Louis came to the hospital and told me that my husband had been picked up. I asked him if he had received any phone calls from David. He said David had called him during the night and asked him to go [fol. 1049] to Mr. Rogge's office. I told Louis to go right from the hospital there, and he did.

Q. Did you ask your brother-in-law how much of a fee Mr. Rogge was to receive?

A. I had no knowledge of the fee at that time.

Q. Did you ask your brother-in-law whether Mr. Rogge was hired to defend him?

A. I hired Mr. Rogge——

Q. One moment.

A. I am sorry.

Q. I think the question is a very simple one.

A. No, I didn't ask him that.

Q. Did you ask your brother-in-law whether Mr. Rogge was hired to represent you?

A. I didn't ask my brother-in-law. I told him to go to Mr. Rogge.

Q. Oh, you were the one that sent him to Mr. Rogge?

A. No, my husband sent him to Mr. Rogge. He told me my husband's message and I told him to go straight to his office.

Q. Did you tell him to hire Mr. Rogge for any particular purpose?

A. To represent my husband.

Q. Not you?

A. Anyone who represents my husband represents me. We are a unit.

Q. I know that, but I am asking you whether you told your brother-in-law?

A. I told him to hire Mr. Rogge. Period.

Q. For whom?

A. Just to hire him.

[fol. 1050] Q. And you didn't tell him for what purpose to hire him?

A. No.

Q. Did you tell him at the time that your husband is not going to defend the charge?

A. I didn't tell Louis anything at the time, just to go to Mr. Rogge.

Q. Well, at the time you told him to go to Mr. Rogge, you say you had made up your mind and your husband had made up his mind to tell the truth; is that the idea?

A. I had always intended to tell the truth.

Q. Yes, that means to confess?

Mr. Kilsheimer: I object to that.

Q. Doesn't it.

The Court: It means to tell the truth.

Q. That means to confess?

Mr. Kilsheimer: I object to that.

The Court: That means to tell the truth.

Mr. A. Bloch: Yes, but I want the witness to answer, not your Honor. I know what is in your Honor's mind. I want to know what is in the witness's mind, and the jury wants to know what is in the witness's mind.

The Court: CAn you answer that question?

The Witness: Well, I have confessed everything I know about it.

[fol. 1051] The Court: Very well.

Q. And you nevertheless told your brother-in-law to pay Mr. Rogge $4,000?

A. Yes.

Q. Just——

Mr. Saypol: Is that at the time her brother-in-law came to her?

The Witness: Yes.

Mr. Saypol: I think the question——

The Witness: I am sorry.

Q. You told your brother-in-law, in effect, in substance, "You have $4,000. of our money. You can turn that over to Mr. Rogge"; is that right?

A. I told him to go to Mr. Rogge and bring the money he had, yes.

Q. Then you went to see Mr. Rogge personally?

A. No, he came to my house.

Q. When?

A. On June 18th.

The Court: Would you like a recess at this point, Mr. Bloch?

Mr. A. Bloch: What is that?

The Court: Is this convenient to you for a recess?

Mr. A. Bloch: It is, your Honor.

The Court: All right, we will have a recess.

(short recess.)

[fol. 1052] Q. Mrs. Greenglass, may I ask you to keep your voice up so that all of us can hear what you are saying?

A. I will.

Q. Thank you. Now you came out of the hospital on the 16th of June?

A. Yes.

Q. And you went home?

A. Yes.

Q. Your home was at 265, I understand, Rivington Street?

A. Yes.

Q. And were you interviewed by any newspaper men on that day?

A. No.

Q. Were you interviewed by newspapermen on the following day?

A. No.

Q. Were you ever interviewed by any newspaper men?

A. Yes.

Q. When?

A. I think it was in August or in September.

Q. Were you interviewed by newspaper men at any time between the 15th of June, and three, four or five days thereafter?

A. No.

Q. You are quite sure of that?

A. I was in bed. Nobody came into the house.

Q. Were you interviewed while you were in bed?

A. Not by a newspaper man.

Q. By whom were you interviewed?

A. I was interviewed in the hospital by the Federal Authorities.

[fol. 1053] Q. No one else?

A. Mr. Rogge and his assistant came to my house.

Q. Did you ever tell any newspaper men that your husband was innocent and that he was going to fight this case to a finish, that he had done nothing wrong?

A. No.

Q. No doubt about it in your mind?

A. No.

Q. On no occasion?

A. No.

Q. When did you go to see Mr. Rogge?

A. He came to see me.

Q. At your home?

A. That's right.

Q. Do you remember the day?

A. Yes.

Q. Did you tell Mr. Rogge that you were innocent?

A. No, I told him the whole truth.

Q. You told him just what you told us today, you say?

A. What?

Q. You told him the same story that you narrated on the stand before we took a recess?

A. I told him everything I could truthfully remember.

Mr. A. Bloch: I move to strike that out. I am asking her whether she told Mr. Rogge the same story——

Q. You narrated when you were on the stand before we took a recess.

The Court: Well, I will accept it if you change it to read, "Did you tell Mr. Rogge substantially what you [fol. 1054] testified to here today".

The Witness: Yes, that I did.

Q. And did you tell Mr. Rogge that you want to be a witness for the prosecution?

A. No——

Mr. Saypol: She has no choice in that, if the Court please.

The Court: That is right.

Q. Answer that, please?

The Court: She has no choice.

Mr. A. Bloch: You sustain the objection?

The Court: I say she has no choice in whether or not to be a witness. The District Attorney——

Mr. A. Bloch: I know, but I am asking her—will your Honor have the reporter repeat the question?

The Court: You want to know whether she volunteered.

Mr. A. Bloch: No, whether she told Mr. Rogge.

The Court: All right, did you tell Mr. Rogge that you want to testify?

The Witness: Well, when Mr. Rogge came to my home——

Q. No, please.

A. I did not say anything about testifying at that time, Mr. Bloch.

The Court: Very well.

Q. Did Mr. Rogge ask you whether you want to testify [fol. 1055] for the Government?

A. I cannot answer it that way.

Mr. Saypol: Just a minute, if the Court please. The way in which these questions are framed does not comport with the facts. June 15th the grand jury in this District had not acted. There was no charge pending so far as this District was concerned, so that to suggest that this witness affirmatively volunteered to be a witness in this case, as counsel puts it, departs from the actualities as they existed.

The Court: Your point being that at that time you did not know what the case was going to be.

Mr. Saypol: Of course not.

The Court: Or who were going to be defendants.

Mr. Saypol: Not even I knew, or my colleagues.

Q. Did you at the time that you spoke to Mr. Rogge know that your husband had been arrested?

A. Yes.

Q. Did you at that time know that your husband was being charged with espionage?

A. Yes.

Q. And did you know that your husband would in course of time be brought into court?

A. Yes.

Q. And was it in anticipation of this knowledge and of what was likely to happen, tell Mr. Rogge that you wanted to testify in favor of the Government?

The Court: Now at what time?

[fol. 1056] Mr. A. Bloch: At the time she first spoke to Mr. Rogge.

The Court: Was there any discussion about that at all?

The Witness: May I answer that in my own way?

The Court: Yes.

The Witness: Mr. Rogge asked me to tell the truth. I told him the truth the way I did here today and he outlined the different courses that could be taken.

Q. One of the courses was what? Will you tell us what Mr. Rogge told you, what courses could be taken?

A. Telling the truth.

Q. To tell the truth? And did he tell you the probability of what was going to happen in the event you told the truth?

A. I don't understand that.

Q. Well, I will reframe the question: Did Mr. Rogge intimate to you that if you told the truth as you say and if your husband told the truth you wouldn't be punished?

A. No.

Mr. Kilsheimer: Oh, I object to that, to what Mr. Rogge intimated, your Honor.

The Court: It has been answered.

Q. Is your answer no?

A. I don't think Mr. Rogge decides that.

[fol. 1057] Q. I didn't ask you that; I am asking you whether Mr. Rogge intimated to you——

The Court: She answered no.

Q. No? Did you ask Mr. Rogge whether you had any chance to escape punishment in case you testified for the Government?

The Witness: (Addressing the Court) Can I ask my lawyer what I can testify in private——

The Court: Well, I think you can answer that particular question as to whether or not you asked Mr. Rogge, understanding that Mr. Rogge is your own lawyer and he can't bind the Government—did you ask him—withdraw that. Maybe this will help you understand what they are after. They are anxious to get your state of mind at the time when you decided you wanted to tell the whole truth. They are anxious to find out whether it was motivated by any promise of any nature or description.

The Witness: May I answer?

The Court: Yes.

The Witness: When I told Mr. Rogge I would tell the truth and when I went to testify before the grand jury, I didn't know what was going to happen.

By Mr. Bloch:

Q. Now, up to the time of your husband's arrest, you [fol. 1058] believed that if you and your husband told the truth neither your husband nor you would be punished?

A. I didn't say that.

Q. Well, did you tell us only a few moments ago that you

believed that if you told the truth, leading to someone else, you would have nothing to fear, or something to that effect?

Mr. Saypol: I object.

The Court: No, she said nothing of the kind. She said when the FBI first talked to her she thought that they were after somebody more important. That is all.

Mr. A. Bloch: I most respectfully disagree with your Honor and except to the statement.

The Court: All right. Proceed.

If you are going to paraphrase previous testimony, be sure you are paraphrasing it accurately.

Mr. A. Bloch: I haven't the minutes before me, your Honor. They haven't been transcribed yet.

The Court: The jury's recollection on the subject will be paramount and will govern. That is my recollection now.

Mr. A. Bloch: O*F* course, that is true.

Q. I asked you, did I not, a few moments ago, a few minutes ago whether or not you were frightened when [fol. 1059] you were told that Gold was arrested?

Mr. Kilsheimer: If your Honor please, we have been all over this subject. I object to going into it all over again.

The Court: No. He is leading up to something else.

Q. And you said you were not frightened because you knew you thought that if you told the truth and your husband told the truth there was nothing to be frightened about?

A. I think it was wishful thinking.

Q. Well, was that your state of mind, that you thought you would not be punished?

A. No, I didn't want to be punished.

Q. Did you hope not to be punished?

A. I did.

Q. And did you at the time you spoke to Mr. Rogge hope that if you told the truth and your husband told the truth you wouldn't be punished?

A. Mr. Bloch, I have always hoped that——

Q. Will you answer my question, please?

A. Yes.

Q. You did?
A. Yes.

By the Court:

Q. Well, would your position in the matter be stated accurately if I stated that you believed you would be punished but hoped you wouldn't be?
A. Yes. He is my husband. I didn't want to see him punished.

[fol. 1060] By Mr. A. Bloch:

Q. How about yourself?
A. Does anyone want to punish himself?
Q. I didn't hear that.
A. Does anyone want to punish himself?
Q. You were very anxious to escape punishment here, were you not?
A. Yes.
The Court: May I see you, Mr. Bloch, for a moment (addressing Mr. E. H. Bloch)

(Conference off the record at the bench between the Court and Mr. E. H.Bloch.)

By Mr. A. Bloch:

Q. Weren't you anxious to know what Mr. Rogge's opinion was as to the probability or possibility of your being punished at the time that he called at your home and you spoke to him and told him as you say the whole truth?
A. I don't think we spoke of that.
Q. Well, did it ever enter your mind to inquire about it?
A. It did later on. I didn't inquire about it. I always thought about it.
Q. Well, did you communicate your thoughts to Mr. Rogge?
A. That is what a lawyer is for. I did.
Q. You did? When for the first time did you communicate that hope you had that you were not going to be punished.
[fol. 1061] The Court: Don't you think we are really going into this in too great a detail?

Mr. A. Bloch: I think it is necessary.

The Court: OF course it is necessary. The question is how deep shall we go into it? You are at it now for I would say roughly about 45 minutes in toto, dealing mostly with this subject matter.

Mr. A. Bloch: May I be honest with you? I expect to go on some more.

The Court: Well, you mean——

Mr. A. Bloch: IF you permit me.

The Court: If I give you permission?

Mr. A. Bloch: Yes.

The Court: Well, I am going to watch it from here on in very carefully.

Mr. A. Bloch: All right.

The Court: And remember this, Mr. Rogge is not on trial.

Mr. A. Bloch: Oh, I am not talking about Mr. Rogge.

The Court: Oh, you have in every question, and furthermore Mr. Rogge was not authorized to speak for the Government and you must bear that in mind in your questions.

Mr. A. Bloch: Your honor, I don't want Mr. Rogge's [fol. 1062] mind. I want her mind.

The Court: Yes, I know very well what you want.

Mr. Saypol: Your Honor, this is getting away from it.

The Court: You want her mind, not your mind.

Mr. A. Bloch: No, not my mind either.

Mr. Saypol: May I say for the record, your Honor that the Court has stated what I intended to say about this phase of the cross-examination. It is always difficult for a prosecutor to decide when to raise a question because of the latitude allowed on cross-examination. I think however at this point I should say that it has gone much too far and I ask the Court to control it.

The Court: Well, I have given him his warning and from here on in he is to guide himself accordingly and I will decide when this subject has been exhausted in my opinion.

Mr. A. Bloch: I understand perfectly that your Honor is the arbiter——

The Court: Let us not have any further argument.

Mr. A. Bloch: Very well.

Q. As a matter of fact, although you are named in the indictment you have not been arrested, have you?
[fol. 1063] A. No.
Q. And you have not been made a defendant in this case?

Mr. Saypol: Just a moment.

Q. Is that a fact?

Mr. Saypol: Just a moment. That sort of question is a negative pregnant, stating that she has been named in the indictment but nevertheless has not been arrested, wanting to infer from that that she is named as a defendant but somebody has either been derelict or deliberately has not done his duty. I think the question ought to be stricken, and if it is accepted at all it ought to be stated accurately to comport with the facts.
The Court: Very well. Proceed.
Mr. A. Bloch: May I get an answer?
Mr. Saypol: May I say for the record, if your Honor please, that this woman is not a defendant by charge of the grand jury.
The Court: But she is named as a co-conspirator.
Mr. Saypol: Yes.

(Last question read.)

The Court: That has already been answered.

By Mr. A. Bloch:

Q. Now, after you spoke to Mr. Rogge did you have [fol. 1064] any interview with anyone representing either the FBI or Mr. Saypol's office?
A. Yes.
Q. When was that?
A. The middle of July.
Q. About a month after your husband's arrest?
A. I think so.
Q. Were you interviewed at all before the middle of July 1950?
A. I said I was interviewed in the hospital.
Q. The same day your husband was arrested?

A. On June 16th.
Q. When?
A. On June 16th.
Q. That is the day you left the hospital?
A. Yes, that is right.
Q. You left in the afternoon or late in the day?
A. Yes, in the afternoon.
Q. And who interviewed you?
A. Two Federal agents.
Q. Do you know his name?
A. One name I can recall. I think it was a Mr.——
Q. Do you see the gentlemen in court here?
A. No.
Q. And you were in bed at the hospital?
A. I was on a stretcher.
Q. On a stretcher? Was there one or two or three men?
A. There were two.

The Court: Before we go along I want to get one point clear.

[fol. 1065] By the Court:

Q. Your maiden name was what?
A. Printz.
Q. And Mrs. Abel is your sister?
A. Yes.
Q. And Mr. Abel is your brother?
A. That is right.

By Mr. A. Bloch:

Q. We were talking about the interview?
A. Yes.
Q. At the hospital. There were two men?
A. Yes.
Q. And they made inquiries concerning this case of you?
A. They asked me questions.
Q. And they jotted down the answers?
A. Yes.
Q. In longhand?
A. I didn't see what they were writing.

Q. Well, you were right there on the stretcher?
A. They could have been taking shorthand.
Q. How long did that interview last?
A. About half an hour.
Q. Was the writing if any, that they took down read to you?
A. I don't recall.
Q. You don't recall? Do you remember signing anything at that time before the FBI men?
A. Not then.
Q. Are you quite sure you didn't sign anything then?
A. I am certain.
Q. Now that was on the 16th of June, right?
A. Yes.
Q. 1950?
A. Yes.
[fol. 1066] Q. Now, between the 16th of June 1950 and the middle of July 1950 did you interview any one of the FBI or anyone in Mr. Saypol's office?
A. No.
Q. Were you subpoenaed to come to this building in the middle of June, July, I mean?
A. No.
Q. How did you come to go to this building?
A. I came willingly.
Q. Voluntarily?
A. Yes.
Q. Had you made any appointment with anyone for the visit?
A. I came to tell the story as far as I knew it.
Q. Did you call anyone up on the telephone and let them know that you were coming?
A. I don't recall.
Q. You don't recall that?
A. No.
Q. You just came down here yourself?
A. I think I came myself.
Q. Was Mr. Rogge with you?
A. Yes, he was once.
Q. Do you know what floor you went to?
A. Fourth floor.

Q. To the FBI office?
A. No.
Q. Whose office was it?
A. That was Mr. Saypol's office.
Q. Who was the gentleman you saw in Mr. Saypol's office upon that call?
A. All the people present?
Q. Yes.
A. Mr. Saypol, Mr. Rogge, Mr. Goldman, my husband, [fol. 1067] Mr. Norton and Mr. Harrington.
Q. Was there a stenographer present?
A. No.
Q. Did anybody take down either in shorthand or in longhand whatever you said?
A. No.
Q. It was an informal talk, wasn't it?
A. I don't remember.
Q. You don't remember?
A. No.
Q. How long did you stay in Mr. Saypol's office on the fourth floor?
A. About 20 minutes.
Q. What?
A. About 20 minutes.
Q. And were you told to come back?
A. I came the next day.
Q. Were you told to come back?
A. Yes.
Q. Who was the one who made the appointment with you?
A. Mr. Saypol told me to come the next day.
Q. And you came again the next day?
A. I did.
Q. With Mr. Rogge?
A. Yes.
Q. And was your husband present?
A. No.
Q. Were the same gentlemen you mentioned before present?
A. Yes.
Q. Two of them?

A. No. Just Mr. Harrington.
Q. Who was absent?
A. Who was absent?
Q. Yes.
A. Mr. Goldman and Mr. Saypol.
Q. And who was doing the inquiry?
A. Mr. Harrington and Mr. Norton.
[fol. 1068] Q. Was there a stenographer present?
A. No.
Q. Was there anybody there taking notes of what you said?
A. Mr. Norton was writing.
Q. There came a time when the interview or the conference terminated, ended that afternoon?
A. Yes.
Q. And were you called upon to sign anything?
A. Not that day.
Q. Was anything taken down read to you at the time?
A. No.
Q. Were you told to come again?
A. Yes.
Q. When was the next session?
A. The next morning.
Q. And were the same people there?
A. Yes.
Q. Was there a stenographer present then?
A. No.
Q. And was there something taken down by way of notation on that third conference?
A. I was shown a typewritten copy of the notes Mr. Norton had taken.
Q. And you read it?
A. I read it.
Q. And you signed it?
A. I read it, corrected it and signed it.
Q. In what way did you correct it? In ink, pen and ink?
A. I typed one part in and I wrote the other part.
Q. And after you read it and you were satisfied with the contents of it you signed your name to it?
A. Yes.
[fol. 1069] Q. Do you know how many copies were made of

that statement, that typewritten statement that you corrected?

A. No.

Q. Were you given a copy of it?

A. No.

Q. After you signed it who took it?

A. I don't know what happened to it. I left it with Mr. Norton and Mr. Harrington.

Q. You left it there?

A. Yes.

Q. Have you ever seen that statement since then?

A. Never.

Q. Was that the statement that you read before you took the witness stand?

A. I said I have never seen it again since I signed it.

Q. But you said you read the statement, didn't you?

A. Yes, when I corrected it.

Q. But you told us——

The Court: Now he is talking about prior to taking the witness stand here today.

Q. You told us you read the statement.

A. But I didn't say that. I said prior to signing the statement I read it; not prior to taking the stand.

By the Court:

Q. Did you read any statement prior to taking this stand today? That is what he is asking.

A. No.

[fol. 1070] By Mr. A. Bloch:

Q. Didn't you in answer to my question as to whether or not you read any document before you came here say that you read a statement?

A. No, I didn't say that.

Q. You are quite sure you didn't say that?

A. I said when I signed the statement in July I read it, but before I came here I read nothing.

Q. So since July, the middle of July 1950 until the moment you took the stand you didn't read that statement?

A. That is correct.

Q. Or any part of it?

A. That is correct.

Q. Did you ever give either the District Attorney or the FBI any other statement?

A. I have spoken to them at other times.

Q. I didn't hear you?

A. I said I have spoken to them at other times.

Q. A written statement I am referring to?

A. You mean a signed statement?

Q. Yes.

A. Never again.

Q. Never did?

A. No.

Q. Were you ever examined by anyone in this building or any other building concerning this case where there was a stenographer present and notes were taken?

A. Yes.

[fol. 1071] Q. Where was that?

A. In Mr. Lane's office.

Q. When was that?

A. I don't remember. It was sometime during the summer,——

The Court: Were you going to fix the date?

The Witness: No. I was going to say something else; And this week.

Q. Two statements?

A. No statement. There was a stenographer present.

Q. A stenographer was present and took down whatever you said?

A. I guess so.

Q. Do you know whether those conferences were transcribed or those statements you made then were transcribed or typewritten?

A. That is the purpose of taking stenography. I assume they were.

The Court: Did you ever see them again?

The Witness: No.

Q. You never saw them again?

A. No.

[fol. 1072] Q. Now did you at any time ask Mr. Rogge whether or not your husband has a chance for leniencey?

A. I don't think I can answer it that way. I always discussed what's going to happen, it was just speculation.

Q. But you discussed it with him?

A. That is all I could think of.

Q. And you also discussed and speculated with Mr. Rogge as to what was going to happen to you?

A. Yes.

Q. That's right, and today you entertain a hope that you- husband is going to be treated with by the Court with lenience?

A. I am telling the story because it's true and I hope and pray that my husband will come home. That is what I want, but I am not telling the story for that, no.

Q. I am not asking you that.

A. Well, I cannot answer it the way you are putting it.

Q. I am asking you——

The Court: The witness has answered your question.

Mr. E. H. Bloch: I move to strike that *that* answer out.

The Court: No, that answer is responsive and it stands.

Mr. E. H. Bloch: I respectfully except.

[fol. 1073] Mr. A. Bloch: And I respectfully suggest that the answer—that the question has not been answered.

The Court: I say the question has been answered.

Mr. A. Bloch: I take an exception to your Honor's ruling.

By Mr. A. Bloch:

Q. Now there came a time when you appeared before the grand jury?

A. Yes.

Q. And when was that?

A. I think it was in August.

Q. Did you at any time before you appeared before the grand jury confer with your husband——

A. I visited him——

Q. —as to what you were going to testify to before the grand jury?

A. No, I went to see him to visit him.

Q. But did you, when you visited him at any time, discuss with him what you were going to testify to before the grand jury?

A. No, I just went to visit him.

Q. Did you at any time discuss with your husband any of the details you related to us this morning and part of this afternoon concerning and affecting these various conferences that were had, as you say, in November 1944, in January 1945 and September 1945?

[fol. 1074] A. Only when——

Mr. Kilsheimer: I object to the question.

The Court: Discuss it when?

Mr. A. Bloch: At any time——

The Court: Prior to coming here today?

Mr. A. Bloch: Prior to coming here today.

The Court: Very well.

A. Only when they occurred.

Q. I did not get that answer.

A. Only when they occurred.

The Court: I don't think you understand the question.

The Witness: I do.

The Court: Mr. Bloch is asking you whether in anticipation of testifying here——

The Witness: Oh.

The Court: —you had reviewed with your husband these incidents.

The Witness: No.

Q. And you still say now that you rely solely upon your memory of the occurrences and talks that were had in 1944 and in 1945?

A. That's right.

Q. Now let's go back to the middle of November 1944. You testified that you, Mr. Rosenberg and Mrs. Rosenberg had a talk.

A. Yes.

[fol. 1075] Q. And where was that talk had?

A. At their home, at 10 Monroe Street.

Q. You were invited to dinner or what?

A. I don't remember how I came to be there.

Q. You don't recall how you came to visit them?

A. No.

Q. Was it in the daytime or at night?

A. It was evening.

Q. And your best recollection is that it was about——

The Court: I cannot hear you, Mr. Bloch; I am sorry, I cannot hear you.

Q. And your best recollection is that that conference or that talk was had in the middle of November 1944?

A. That's right.

Q. And you sat around a table, I imagine, right?

A. I don't recall that.

Q. You don't recall. Don't you recollect the scene of that conference and where it was had and in what room it was had?

A. Not every detail.

Q. At any rate, somebody started talking?

A. Yes.

Q. Who is the one who started to talk?

A. I don't remember that.

Q. Well, do you recall testifying this forenoon that it was Mr. Rosenberg started talking about this espionage [fol. 1076] business?

A. About that particular conversation?

Q. Yes. Who started to talk?

A. Who started the conversation, the first one who opened his mouth that evening, I can hardly recall that.

Q. I am not talking generally. Of course, you said "Good evening" or "Good morning", but after you sat down and began to talk about this espionage and your intended trip to the West, who started to talking and mention anything about espionage?

A. Julius Rosenberg.

Q. Julius. You are sure of that?

A. Yes, I think so.

Q. And he said something about giving up Communist activity?

A. Yes.

Q. You remember that distinctly?

A. Yes.

Q. And you remember very distinctly that he said something about not having a certain newspaper in his house?

A. No, I didn't say that. I said he didn't buy the Daily Worker at the usual newsstand but I didn't say that he didn't have it in his house.

Q. He did not buy the Daily Worker any more?
A. No, I didn't say that.
Q. You did say that——
The Court: Now listen—just a moment. You are not [fol. 1077] listening.
A. I said that he didn't buy the Worker at the usual newsstand, not that he didn't have it in his house.
Q. I am sorry, I didn't hear that part. You remember that very distinctly?
A. Oh, yes. I remember the newsstand he told me he bought it at.
Q. And you also remember everything else that you have testified to that he said?
A. To the best of my recollection.
Q. And then you say Ethel broke into the conversation?
A. Yes.
Q. And she said what.
A. She said that she wanted me to tell to David that the least I could do was relay the message because this is what he would want, it was right for him.
[fol. 1078] Q. When Julius Rosenberg was telling you about the plight of Russia and that she was entitled to information the way other people or other nations are entitled to information, did you agree with him?
A. I don't think it was a question of agreeing. I said that I didn't think——
Q. I am not asking you about that. I am asking you——
A. I can't answer.
Q. I am asking you whether you agreed with her at that time?
A. I can't answer it the way it is phrased.
Q. Why can't you answer it the way it is phrased?
The Court: Let us have no argument.
Did you voice agreement?
The Witness: I said that I didn't think that we were in a position to decide whether the information should be shared.
Q. In other words, you disagreed with him?
A. If that is what it means, yes.
Q. And you said so?
A. Yes.

Q. And when he proposed this espionage activity, you objected to it?

A. I didn't think it was right.

Q. And did you think that it was not moral?

A. I didn't think that I should be the one to decide such an issue. I thought that it was way beyond me.

[fol. 1079] Q. Did you tell him that?

A. Yes, I told him I didn't think it was right, that I was frightened by the whole thing.

Q. Well, did you tell him that you didn't want to have anything to do with it?

A. I don't remember just exactly what I said, but I didn't—I said I didn't like it.

Q. In substance?

A. Yes, that was it in substance.

Q. But then you changed your mind?

A. No, I said I would give the message to my husband.

Q. Who is the one who asked you to give the message to your husband?

A. Both Ethel and Julius.

Q. Are you aware of the fact that this morning you said it was Ethel who said that?

A. No, I said Ethel said I should tell it to David because it was right for him, but Julius told me that I should ask David if he wanted to pass the information on. That is what I said.

Q. Had you then made up your mind that you were going to advise your husband what to do or what not to do in connection with the matter proposed?

A. I did.

Q. What was your determination at that time?

A. I told my husband exactly——

[fol. 1080] Q. No, I am asking you, what was your determination at the time it was proposed to you, in the middle of November, 1944, when this proposition was made to you by Mr. and Mrs. Rosenberg?

A. I was going to give him the message and tell him how I felt about it.

Q. And a few days afterward, I imagine, you received $150.?

A. That's right.

Q. And you took your trip and arrived at Albuquerque on the 28th of November?

A. 27th or 28th.

Q. Or the 27th?

A. Yes.

Q. Then we had that walk along the Rio Grande River, on Route 66?

Mr. Saypol: Did you say "we had that walk"?

Mr. A. Bloch: We had the story of the walk.

Mr. Saypol: Oh, I didn't think you took the walk.

Mr. A. Bloch: I never walked there.

Mr. Saypol: May the question be reframed?

The Court: You and your husband took a walk; Mr. Bloch was not on the walk; you and your husband were.

The Witness: Yes, that's right.

Mr. A. Bloch: I will concede it, too.

Q. Then you transmitted to your husband, in substance, what had been told you by Mr. and Mrs. Rosenberg?

A. That is correct.

Q. Did you tell your husband that you don't want him [fol. 1081] to participate in that?

A. I told my husband exactly the way I felt.

Q. And what did you tell him you felt?

A. I told my husband that I thought it was wrong, that I didn't think we should be the deciding authorities.

Q. Did you think at that time that it was a crime?

The Court: Oh, you have been over this at least six times.

Mr. A. Bloch: Does your Honor sustain the objection?

The Court: Yes.

Mr. A. Bloch: I except.

Mr. E. H. Bloch: Will you- Honor pardon me just a second?

The Court: Yes.

Q. Did your husband or you, upon that occasion, discuss as to whether or not the thing was a violation of law?

A. No, neither of us know very much about law.

Q. I asked you whether you discussed it?

The Court: The question was whether you discussed it?

A. No.

Q. You did not. Did you express any fear of punishment in case your husband undertakes to do what was proposed to him?

[fol. 1082] The Court: You mean, express it to her husband at that time?

Mr. Bloch: At the time.

Mr. Kilsheimer: I object to this, your Honor, I think we have gone over it.

The Court: Overruled.

A. I don't think I thought of punishment at that time.

Q. I didn't get your answer, I am sorry.

A. I said I don't think I thought of punishment at that time.

Q. What did your husband say when you first made the proposition? Give me the substance of what he said?

A. His first reaction was the same as mine.

Q. What did he say?

A. He said that he didn't want to do it; that he was afraid to do it and he didn't think it was right for us to do it.

Q. But he said that he was afraid to do it?

A. Yes.

Q. Did you ask him what he was afraid of?

A. No, I don't question every word he says.

Q. Well, didn't the word "afraid" or "fear" arouse in your mind that there may be danger to him?

A. No, the word "afraid" has several connotations. I didn't think of what he was afraid of.

[fol. 1083] Q. You didn't think and you didn't ask?

A. No, I didn't.

Q. Did your husband say he was going to think it over?

A. Yes.

Q. There was nothing further said that evening on the subject?

A. Not about that, no.

Q. How long after that talk with your husband did come to you and tell you that he had changed his mind and he was going to do what was asked of him?

A. The next day.

Q. In the morning?

A. I don't recall.

Q. And he then and there gave you the information that you testified to?

A. He gave it to me and repeated it and asked me to repeat it to him, yes.

Q. Now, can you recall what information he gave you at that time?

A. Yes. Do you went me to give it?

Q. No. I am going to ask you specifically.

A. All right.

Q. Did he give you the names of the alleged top scientists?

A. He gave me the names of several scientists. I don't know who was at the top.

Q. Well, did you ask him for the names of top scientists?

A. I don't remember that. I asked him the names of scientists working there.

Q. Did he give you the name- of scientists or alleged scientists?

A. Yes.

[fol. 1084] Q. Do you remember what names he gave you?

A. Yes.

Q. What are they?

A. Dr. Urey, Dr. Oppenheimer, Kistiakowski, and Neils Bohr.

Q. And did he give you the location of Los Alamos?

A. He gave me the approximate distance from Santa Fe and Albuquerque. I wouldn't remember if he——

Q. Did he give you the number of employees that were employed at the Project?

A. Yes, he did.

Q. Do you remember what number it was?

A. No, I don't.

Q. But you remember the approximate location of the place there; you said something about 40 miles, did you say, or 50 miles?

A. I don't remember the geographical location. I remember the distance from those two points.

Q. You remember his telling you that?

A. Yes. Then I lived there and I know about it now.

Q. What else did he tell you?

A. He told me that the place where the Project was then had formerly been a horse-riding academy; that it was at the top of a hill; that you could hardly see it until you almost came there.

Q. Did he tell you not to jot all this information down in writing?

A. That's right.

Q. Did he tell you that you were to memorize that information?

A. He did.

Q. And to transmit it to Rosenberg?

A. Yes.

[fol. 1085] Q. Did you ask him why you weren't to take it down in writing?

A. I didn't have to ask him. Julius had instructed me not to.

Q. Well, did you realize then that there was danger in your taking this thing down in writing, all these items down in writing?

A. I think I was too young to realize the whole thing fully at the time.

Q. You were young?

A. Yes, I was.

Q. How old are you?

A. 26.

Q. And at that time you were approximately 20?

A. That's right.

Q. So you now say, because you were young you didn't realize the danger?

A. No, I don't say that. I say I don't think I understood the significance of what was happening.

Q. Oh, you didn't, and the first time you began to realize it was when?

A. I think I realized it most clearly after Gold left and then again after the bomb had been dropped on Hiroshima.

Q. But you were worried, you told us this forenoon that you were worried?

A. When?

Q. Right then and there, right from the beginning?

A. I didn't say I was worried. I said I didn't approve of it; I didn't want it.

Q. You didn't say that you were worried?

[fol. 1086] A. I don't recall saying that. I may have.

Q. And if you said it, you didn't mean it?

A. No, I didn't say that.

The Court: She said she didn't say it.

Q. And you thought nothing about the results that may follow your doing what you were doing at the time?

A. No, not then.

Q. Didn't think of it at all?

A. No.

Mr. E. H. Bloch: Pardon me one second. May I approach the bench?

(Discussion at the bench, outside the hearing of the reporter and the jury.)

The Court: We will recess at this point until 10.30 tomorrow morning.

(Adjourned to March 15, 1951, at 10.30 a. m.)

[fol. 1087] New York, March 15, 1951

10:31 a. m.

Trial resumed.

RUTH GREENGLASS, resumed the stand.

(The following proceedings were had at the bench, out of the hearing of the jury:)

Mr. Kuntz: I saw the front page of the New York Times this morning in the courtroom for the first time——

The Court: Will you keep your voice down?

Mr. Kuntz: —and I suggest if it is agreeable to your Honor that we have a conference on the record but privately, in chambers, because I think this is a very serious matter to the defendants.

The Court: We will do it later.

Mr. Kuntz: All right.

Mr. Saypol: I would just as leave have it in open court.

The Court: Not before the jury.

Mr. Saypol: Oh, indeed not, of course not.

The Court: Do you want to have it in court?

[fol. 1088] Mr. Kuntz: I have never tried a case in my life in the newspapers.

The Court: Well, let us hold it for a while.

Mr. Saypol: Well, I don't care for the implication, and I have had experience with this kind of defendants before, and with what I anticipate is to be said, I have no qualms about discussing it.

The Court: We will take it up later.

Mr. Saypol: I don't recognize any implications or inferences or innuendos.

The Court: All right.

(The following proceedings were resumed in the hearing and presence of the jury:)

The Court: Proceed, Mr. Bloch.

Cross examination continued.

By Mr. A. Bloch:

Q. Mrs. Greenglass, I will ask you to direct your mind to the morning of May 24, 1950, when you say Mr. Rosenberg came to your house with the Herald Tribune, wasn't it?

A. Yes.

Q. And showed you the picture of Gold.

A. That's right.

Q. And asked you in substance to leave the city immediately?

A. To leave the country.

Q. Leave the country. And he gave you $1,000?

A. Yes.

[fol. 1089] Q. You also told us, I believe, that you never intended to leave the country?

A. That's right.

Q. And at the time you received the thousand dollars you didn't intend to leave the country?

A. That's right.

Q. And part of that thousand dollars you deposited to your husband's account in the Manufacturers Trust Company?

A. No, my husband deposited it.

Q. Yes, but you know as a fact that it was deposited?

A. It was deposited when I was in the hospital.

Q. Do you know now whether it was deposited of your own knowledge?

A. Yes.

Q. Nevertheless, on the 28th of May 1950 you took passport photographs?

A. That is right.

Q. Six copies of them, is that right?

A. Yes.

Q. And at the time these photographs were taken you knew that you were not leaving the country?

A. That's right.

[fol. 1090] Q. Did you talk it over with your husband as to the reason you were taking photographs when you did not intend to leave the country?

A. Yes.

Q. Was it to deceive Rosenberg?

A. Yes.

Q. And make him believe that you were going away?

A. That is right.

Q. Did you have in mind that you were going to get additional money?

A. No, it wasn't a question of giving him the pictures for the money.

Q. Well, what was the object of deceiving him?

A. Because we didn't want Mr. Rosenberg to think we were going to stay in the country, because we were harmful to him.

Q. I didn't get that last.

A. I said, we were harmful to him.

Q. Didn't you have in mind at all the $4,000. or the $5,000. that you were to receive?

A. That was not the purpose of taking the pictures.

Q. But on the 4th of June 1950 you say Mr. Rosenberg brought you $4,000.?

A. That's right.

Q. You took that $4,000.?
A. Yes, he gave it to my husband.
Q. You were there at the time, weren't you?
A. I was in the house.
Q. And did you talk it over with your husband as to [fol. 1091] what was to be done with that money?
A. Yes.
Q. You had the account, did you not, at that time, in the Manufacturers Trust Company?
A. I did.
Q. And none of that $4,000. was deposited to that account?
A. Never.
Q. Or to any account?
A. No.
Q. Who suggested that the money be turned over to your brother-in-law, Mr. Abel?
A. My husband and I talked it over and we both decided to do that.
Q. Was that money turned over to Mr. Abel to secrete it from somebody?
A. No.
Q. Had you ever turned any money over to Mr. Abel before?
A. I have lent him money when he asked for it.
Q. What is that?
A. When he asked to borrow money, I gave it to him.
Q. Well, did you lend him the $4,000.?
A. No, I asked him to hold the $4,000.
Q. Well, was there any reason for not depositing that money in your bank?
A. Yes.
Q. What was the reason?
A. It would seem very odd for us to deposit $4,000. at one time.
Q. Were you afraid to keep it in your house?
A. No, I don't th*at* that was it.
Q. Well, why wasn't it kept in your house, in the chimney, as you say, where it was originally put?
[fol. 1092] A. Mr. Bloch, my husband——
Q. Will you answer the question?

The Court: She is answering.

A. (Continuing) —wanted to tear the money up and flush it. We had no particular love for the $4,000; we weren't trying to get money.

Q. But you didn't flush it?

A. No, we didn't.

Q. And you didn't tear it up?

A. No, because Mr. Abel, when my husband told him what he had in mind, asked him to give him the money, not to do that with the money.

Q. You consulted Mr. Abel before you gave him the money?

A. No, my husband said he had $4,000. and he was thinking of giving it to Mr. Abel to hold, and he was deliberating whether he should destroy it, he didn't tell him anything about the money.

Q. Did you advise you- husband to destroy the $4,000.?

A. I had no particular interest in what happened to the money.

Q. You didn't?

A. I never touched it.

Q. Wasn't that money deposited with Mr. Abel so that in the event of your husband's arrest it should not be found in your possession?

A. I don't think we thought of it at that time.

[fol. 1093] Q. I didn't hear you.

A. I said I don't think we thought of it at that time.

Q. You don't think?

A. No.

Q. Well, didn't you talk it over with your husband?

Mr. Saypol: I think there has been enough of this now, if the Court please, on this phase.

The Court: You are going around a circle, around a circle, Mr. Bloch. She said she did talk it over with her husband and she said her husband wanted to tear it up and flush it down.

Q. Was Mr. Abel in your house at the time that money was turned over to him?

Mr. Saypol: That was the same topic, if the Court please.

The Court: Well, I will let him ask it once more.

A. I don't recall. I don't think I was present when the money was turned over.

[fol. 1094] Q. Where does Mr. Abel live?

A. On Columbia Street, Manhattan.

Q. How far from the place you live?

A. Right around the corner.

Q. Now Mrs. Greenglass, was that money in your house at the time the FBI people came?

A. No.

Q. And did you ever see the package or the wrapping paper in which the money was wrapped?

A. Yes.

Q. When did you see it for the first time?

A. I saw it for the first time after Julius Rosenberg left the house and my husband showed it to me. I saw it for the second time in Mr. Rogge's office.

Q. Now, you testified yesterday that in 1946 you saw a console table in the Rosenberg apartment?

A. Yes.

Q. And you described that console table?

A. Yes. It was a dark mahogany table, didn't have much carving. It had a sort of scalloped effect.

Q. I didn't ask you to describe it. I call your attention to the fact that you did so testify yesterday.

A. Oh, I am sorry.

Q. When was the last time that you saw that table in the Rosenberg apartment?

A. Either 1948 or 1949.

Q. How often did you visit the Rosenbergs in the year 1946?

A. Well, after my son was born, very infrequently.

[fol. 1095] Q. When you say infrequently was it twice a year?

A. It might have been maybe more. I didn't count the number of times.

Q. Well, can you give us the approximate number of times that you visited them in 1946?

A. I don't think so.

Q. Can you give us an approximate idea of how many times you visited them in 1947 and 1948?

A. No.

Q. Your best recollection is that you saw that console table in 1949 you say?

A. I say either in 1948 or 1949.

Q. So isn't it a fact that in 1949 you didn't visit the Rosenbergs at all?

A. No, I didn't say that. I said 1950——

Q. No, I am asking you whether it is a fact?

A. No, I think I was there in 1949.

Q. What part of 1949?

A. Probably the beginning.

Q. Now, didn't something happen in the beginning of 1949 and the end of 1949 that created hostility between you and the Rosenbergs?

A. No, there was no hostility.

Q. Did you ever visit the place of business of this machine shop?

A. Yes. It was near my home.

Q. In 1949?

A. Yes.

Q. How often did you visit that shop?

A. As often as I happened to be near there. I used to go [fol 1096] by there with the carriage.

Q. You lived how far away from that shop?

A. About five blocks.

Q. You went there almost every day, didn't you?

A. No, I didn't say that. I said as often as I happen to be there.

Q. I am asking you?

A. I don't remember, Mr. Bloch.

Q. You don't even remember how often you visited that shop in 1949?

A. Was it important?

Mr. Saypol: I object to the form of the question "You don't even remember". The inference being that the witness is not testifying truthfully.

The Court: The question is do you remember.

Mr. E. H. Bloch: If the Court please, I move to strike out the answer of the witness upon the ground that it is not responsive.

The Court: Yes, and we will strike out the question too. Now the question is do you remember.

The Witness: I am sorry, I don't remember the whole question.

The Court: Will you repeat your question Mr. Bloch, without the word "even".

Q. Do you remember how many times you visited—I withdraw this.

[fol. 1097] Mr. A. Bloch: I don't recall the question in exactly the way I put it.

(Last question read.)

Mr. A. Bloch: Has your Honor——

The Court: I have sustained the objection to the "even", that is right. You may rephrase the question.

Mr. A. Bloch: I will reframe it leaving out the word "even".

The Court: That is correct.

The Witness: No, I don't.

Q. You don't. Did you know that your husband and Mr. Rosenberg had had differences about the business that was being conducted there?

A. I heard that.

Q. Were you ever present when any discussion was had between your husband and Mr. Rosenberg?

A. I was present——

Q. About the business?

A. I am sorry; I was present and there were others, too.

Q. Didn't your husband accuse Mr. Rosenberg of not treating him right?

A. No, it didn't happen that way.

Q. Well, what did he accuse him of?

A. My husband didn't accuse him of anything, Mr. Bloch.

Q. Well, did your husband demand money he claimed he was entitled to?

A. No.

Q. Did he complain of anything that happened at that [fol. 1097-A] shop?

A. I think both my husband and his brother were dissatisfied with the shop.

Q. But your husband was dissatisfied, wasn't he?

A. Not alone, no.

Q. And Bernie was dissatisfied?

A. That is right.

[fol. 1098] Q. And as a result of that dissatisfaction there were arguments, weren't there?

A. There weren't arguments, there were discussions over it.

Q. And what was the subject of those discussions?

A. When? In 1948 or 1949?

Q. 1949.

A. Well, over a period of time Ethel Rosenberg had been complaining that David and Bernie were not paying attention to the shop, that Julius was doing all the work, working hard, David and Bernie weren't keeping the proper hours, and they were wasting their time in talking where Julius was coming in there in the morning hours, that they were coming in at ten or ten thirty, and he was sick a great deal of the time and he was tired of the whole business.

The Court: Is that what she said?

The Witness: That is right. She——

Q. Did you participate in that?

Mr. Saypol: Wait until she finishes.

The Witness: (Continuing): And my sister-in-law Gladys—she is deceased now—was very unhappy about the discussions and she said——

Mr. E. H. Bloch: I move to strike out that——

The Court: Yes, strike it out.

The Witness: All right. My sister-in-law was displeased——

[fol. 1099] Mr. E. H. Bloch: I move to strike that out.

The Court: Yes. Don't tell us about your sister-in-law being displeased—unless this is something that occurred in the presence of Julius Rosenberg.

The Witness: It did occur.

The Court: All right, proceed.

The Witness: She disagreed. She said it was not so, that they were paying attention, that after all they knew what they were doing about their work and Julius was a novice as a salesman. In 1949 we wanted to leave the business. We wanted, as a matter of fact, in 1948 too. We

wanted to sell our stock, too, and Bernard wanted to sell his stock and there was quibbling back and forth. It was a question of whether this business contract would make money and whether the business would become solvent and it would be worth our while to remain. Those were the subject of discussions.

Q. And you participated in those discussions?
A. Not in all of them.
Q. I did not get that.
A. Not in all of them.
The Court: She said, "not in all of them."
Q. Didn't you talk it over with your sister-in-law?
A. Which sister-in-law?
Q. Mrs. Rosenberg?
A. I don't believe I discussed with her leaving the business.
[fol. 1100] Q. Didn't you complain to your mother-in-law and to other members of the family that your husband was being treated as a menial instead of one of the owners of the business?
A. No, I don't think I put it that way.
Q. Well, how would you put it?

The Court: Not "how would you" "How did you."

A. I said I didn't think my husband was being paid commensurate with the work done.
Q. And did you also complain to members of the family that your husband was losing his investment in that business?
A. I don't think I did.
Q. Well, was he losing his investment in that business?
A. We lost everything in that business.
Q. Well, he was losing it, wasn't he, 1949?
A. He lost it prior to 1949.
Q. And don't you know that your husband wanted to be paid the amount of his investment in order to get out of that business?
A. Mr. Bloch, my husband wanted some money for his stock.
Q. And he demanded it?
A. He didn't demand it. He asked for it.

Q. He asked for it?
A. That's right.
Q. Do you make a distinction between "demanded" and [fol. 1101] "asked"?
A. Yes.

Mr. Saypol: That is argumentative.

Q. Very well, but he did not get any money, did he?
A. No, not for the business.
Q. And as a result of that he left the business in August?
A. No, he left the business because he had not been earning salary for a year and we wouldn't continue to live without an income.
Q. He left the business in August?
A. That is right.
Q. And did you continue on speaking terms with Ethel after your husband left?
A. I did.
Q. Did you visit their home after he left the business?
A. I don't think I visited much before he left the business.
Q. How long before——

Mr. E. H. Bloch: Wait—I move to strike out the answer as not responsive.

The Court: No, it will stand.
Mr. E. H. Bloch: I respectfully except.

A. I think the last time I visited there was in the winter, the early winter of 1949.
Q. You mean the beginning of 1949?
A. That is right.
Q. And then was it on account of this friction that had [fol. 1102] occurred between your husband and Mr. Rosenberg that you stopped visiting them?
A. No, Mr. Bloch, there is no friction involved. We wanted to have money for food and we had to go to work.
Q. Now I am going to ask you a direct question——

The Court: I assume they are always a direct question.

Q. —are you hostile to either Mr. or Mrs. Rosenberg?
A. No.
Q. Are you friendly towards them?

A. I have friendly feelings.
Q. And do you wish them well?
A. I do.
Q. And do you wish them to be acquitted in this case?

The Court: Oh, now——
Mr. Kilsheimer: I object to that.
The Court: —that is going too far.
Mr. A. Bloch: Does your Honor sustain it?
The Court: It is immaterial of what she wishes with respect to the acquittal. That will depend on the jury. I think you have tested her motives sufficiently with your questions.
Mr. A. Bloch: Is your Honor sustaining the objection?
The Court: Yes, I sustain it.
Mr. A. Bloch: I except.
[fol. 1103] The Court: Very well.

Q. Do you know that your husband asked Mr. Rogge to commence an action against Mr. Rosenberg for the collection of either one thousand or two thousand dollars?
A. He didn't ask him to start an action, Mr. Bloch.
Q. He did not?
A. No, and I was the one who spoke of it, not my husband.
Q. Well, did you tell Mr. Rogge to call up myself and ask or make a demand for the money that your husband claimed Rosenberg owed him?
A. Mr. Bloch, I asked Mr. Rogge——
Q. Will you please——
A. I will answer your question if you will allow me to.
Q. Answer it yes or no.
A. I cannot answer it yes or no. We did not demand and we did not claim. There was a debt.

The Court: All right, you tell us what happened.
The Witness: I spoke to Mr. Rogge. I said that David had left the business and Bernard had left the business and no money had been paid to either one for their share of the common stock and we wanted to see if we would be paid for it. That is exactly what I asked Mr. Rogge.
Q. That stock had already been assigned, had it not?
A. The stock was turned over in January 1950. Do you want the full story on it?

[fol. 1104] Q. Were you present at the time the stock was turned over?

A. I was.

Q. And you say the stock was turned over in January?

A. Oh, I am sorry. It was turned over in May. In January 1950 we assigned it over and we had it notarized and we asked Mr. Rosenberg to sign the promissory notes and he refused, and he said we did not have the understanding that required it—a verbal understanding was sufficient, and he gave neither my husband nor his brother a note.

Q. And that is what you told Mr. Rogge?

A. No, I told Mr. Rogge further that I had bought a book of promissory notes and made out the notes but Mr. Rosenberg had not signed it.

Q. Well aren't you a bit angry at either Mr. or Mrs. Rosenberg because they did not pay you what you think you were entitled to?

Mr. Saypol: Objected to as to form.

The Court: Overruled.

A. I don't think I am angry. I just can't understand their actions because there was a debt due.

Q. You are not angry?

A. No, I am not angry. I don't understand people who do not pay their debts, Mr. Bloch.

Q. And you resent it?

A. I don't think I resented it. I couldn't understand [fol. 1104a] why *it* wasn't being paid for what was rightfully mine.

Q. And you do not resent it now either?

A. Would I get anything with resentment?

Q. Well, I am asking you whether you resent it now?

A. No.

[fol. 1105] Q. Now, Mrs. Greenglass, you lived at Albuquerque for how long?

A. A year.

Q. Between what periods of time?

A. I lived there from March of 1945 to March of 1946.

Q. And during that period did Mrs. Rosenberg correspond with you?

A. She did.

Q. How often?

A. Perhaps three or four times.

Q. She corresponded with her brother Dave, didn't she, too?

A. No.

Q. She did not?

A. She sent the letter to my home. If she corresponded with Dave, it would have to go to Los Alamos.

Q. Didn't she write the letters on her own behalf and on behalf of her mother to Dave and to you?

A. There were both; there was a letter from her on behalf of her mother and one from herself.

Q. Well, can you tell us how often she wrote those letters?

A. Well, the letters on behalf of her mother were not written too frequently, because my sister-in-law Gladys used to write to my mother-in-law, too.

The Court: Your sister-in-law Gladys was married to——

The Witness: To Bernard.

The Court: —Bernard; Bernard was your husband's brother?

[fol. 1106] The Witness: That's right.

Q. Did you keep any of those letters?

A. I kept some of them, not all.

Q. Well did you have a place where you kept your correspondence that you received from the various people you knew in New York or elsewhere, while you were at Albuquerque?

A. Yes.

Q. And did you put those letters that you received from Mrs. Rosenberg amongst those letters that you held and kept from other people?

A. Not all of them.

Q. Was there any particular reason for destroying some or not keeping some?

A. I didn't say I destroyed it, Mr. Bloch. I said I didn't remember what had happened to that particular letter.

Q. Well, I am asking not about any particular letter; generally?

A. I can't think of any reason.

Q. You said you didn't keep some; was there any reason for not keeping some?

A. Well, I was there a full year; I received a lot of correspondence. Had I kept them all I would have no room for furniture.

Q. So you picked and chose which to keep and which not to keep?

A. No, I didn't pick and choose. Some I kept and some I just did away with some way.

Q. You did it at random?

A. I don't recall what my feelings were at that time. It is several years ago.

[fol. 1107] Q. Is your memory bad?

Mr. Saypol: I object to that.

The Court: I will overrule it.

Do you know whether you have a good memory or not?

The Witness: I have a good memory in most things, yes, things that are important.

Q. And in some things you have not?

A. Not in every detail, no.

Mr. E. H. Bloch: May I have Government's Exhibits 4 and 4-A?

I am not going to be very long, your Honor.

The Court: Is Mr. Bloch, Sr. finished?

Mr. E. H. Bloch: He is finished.

The Court: Mr. Bloch, Sr. is finished; is that right?

Mr. A. Bloch: Yes.

Mr. E. H. Bloch: In order to save time, your Honor, while the members of Mr. Saypol's staff are looking for that exhibit, maybe I can proceed to—all right.

Cross-examination.

By Mr. E. H. Bloch:

Q. Now, Mrs. Greenglass, I direct your attention to Government's Exhibit 4 in evidence (handing), and ask you whether you say that that piece of paper or cardboard [fol. 1108] represents accurately the type of cover of the Jello box, that you say was cut up in the Rosenberg house some time during the week of January 1945?

A. I don't know if the style of the box changed since then.

Q. Did I ask that?

A. Well, I can't tell you.

Mr. E. H. Bloch: I move that the answer be stricken.

The Court: Just a moment, Mr. Bloch. Let's not argue with the witness. It is responsive.

A. (Continuing) It was a Jello box and it was a red flavor. I remember there was a red thin line around the instructions side.

Q. Was there a green line around it?

A. No, green line is on a lime box.

Q. Now, you are sure that the printing was red?

A. No, I didn't say the printing.

Q. I mean, this part here—let me identify it very clearly—in other words, on the edges, at least on some of the edges, as you put the box this way (exhibiting), there was just a red color; is that right?

A. I said that there was a red line around the instructions side, that I held; there was a red line, a red thin line framing it.

[fol. 1109] Q. Did you notice any other red in the box outside of the red on the instructions part?

A. Yes, I saw it before Mr. Rosenberg cut it.

Q. Now, when you are talking——

Mr. E. H. Bloch: Do you mind if I stand up here, your Honor?

The Court: All right, as long as the witness speaks up.

Q. Now, when you talk about the red line, are you talking or are you referring to the red line which is shown on the edge or the edges of Government's Exhibits 4-A and 4-B (showing)?

A. I am.

Q. Did you have a good look at the face and rear and the other side of the Jello box that night; and I show you Government's Exhibit 4 to refresh your recollection in answering that question (showing)?

A. I only saw that for a minute. However, the other part was in my wallet at all times, and I saw the red line.

Q. Now, may I ask you whether or not you knew the flavor of the Jello box that was cut up?

Mr. Saypol: I object to that. That is immaterial.

The Court: Overruled.

A. No, I did not.

[fol. 1110] Q. You did not?

A. There were three red flavors.

Q. You know that now?

A. I have always known it. I cook.

Q. You knew it at that time?

A. Yes.

Q. Did you look to see what flavor it was?

A. I wasn't cooking the Jello.

Q. I didn't ask you that. Did you look?

A. No, I didn't; I did not.

Q. Now then, you say this—a side was cut up?

A. That's right.

Q. And that is reflected here in government's Exhibits 4-A and 4-B (showing)?

A. Yes.

Q. Then I think your testimony was that you took one part of that and Julius kept the other part?

A. That's right.

Q. Is that right?

A. Yes.

Q. Then you put that part, I believe you testified, in your wallet?

A. That's right.

Q. Now, did you keep that side that you were given in your wallet at all times until Mr. Gold came to your home in Albuquerque on June 3, 1945?

A. I did.

Q. Prior to the time that you say you put your side in the wallet in Rosenberg's home in January 1945, did you look at the piece that was given to you?

[fol. 1111] A. I noticed it was the instructions side.

Q. Did you notice what was written on there?

A. No, I didn't read it.

Q. Can you tell us now what was printed on that side of the cardboard box, cardboard Jello box, that you received, as you say, in the Rosenberg home in January 1945?

A. It was not pertinent, and I didn't have to know.

Mr. E. H. Bloch: I move to strike out "It was not pertinent", your Honor. I submit I am entitled to a very clear answer.

The Court: Yes, I will strike out the answer. You didn't look at it?

The Witness: No, I didn't look at that time.

The Court: Now, let me ask you this; what was important to you?

The Witness: I had the Jello box side to identify myself to whoever was to come out with the other matching half. It wasn't necessary for me to memorize what was written on the instructions. I memorized the instructions Mr. Rosenberg gave me and the information my husband gave in return. This had nothing to do with it.

Q. Maybe you didn't understand my question.

A. Oh, I did.

[fol. 1112] Q. All I wanted to know is whether or not you noticed what was written or printed on this side, that you said you got.

A. Sufficiently to know that it was the instruction side, but not the other side, with the picture of the little girl on it.

The Court: Excuse me. When the bearer of the other half of that side of the Jello box was to come to you, was it your primary purpose in seeing whether the two sides would fit together like a jigsaw puzzle?

The Witness: Yes.

The Court: Very well.

Q. Was the side of that Jello box, as you say, cut up——

Mr. E. H. Bloch: I am almost through. Mr. Saypol suggests that I let the jury look at this while I am interrogating the witness on this point and I have no objection to that at all.

The Court: They have seen it already.

Mr. E. H. Bloch: That is what I thought.

Q. Was the word "instruction" printed on the part of the side of the Jello box that you say you received at the Rosenberg house?

A. I didn't notice that word. I saw the recipe.

Q. What was the recipe?

A. I don't remember it. I can tell you how to cook Jello.

[fol. 1113] Q. You have cooked Jello many, many times, haven't you?

A. Yes.

Q. For your family?

A. Yes.

Q. And you cooked Jello for your family prior to January 1945, did you not?

A. Yes.

Q. Now did I understand you correctly to say that one of the points of disagreement between your husband and Bernie, your husband's brother, and Julius Rosenberg while they were in business together at Pitt Machine Products Company was that your husband was not being paid sufficiently?

A. No, I didn't say that.

Q. Well, let me hear that again, please.

A. I said that I didn't think that my husband was being paid commensurate with the work done, and there was a period when both of them and Julius too were being paid nothing.

Q. When you say you didn't think that he was being paid sufficiently, did you voice that opinion of yours to Julius Rosenberg?

A. I voiced it to Julius Rosenberg, Isidore Goldstein, David Greenglass, Bernard Greenglass, and my mother-in-law in her house, in 1946, just before they went into business.

Q. Did you voice any such objection after the Pitt Machine Products Company was formed?

A. I didn't voice an objection, Mr. Bloch. I felt that they [fol. 1114] were all partners. They shared the common stock. They had the same number of shares, the three of them did, and I felt that they should share their profits equally but that the salary should be commensurate with the work done.

Q. Now, did you say that?

A. I did.

Q. To Julius Rosenberg?

A. I did.

Q. And did you say that in connection with the amount of drawings from the Pitt Machine Products Company?

A. Drawings or salary?

Q. Salary. I am using drawings synonymously with salary.

A. I always said that. However, there was a time that

there wasn't enough money in the business, and there was a question of just taking for our needs. Then we all took the same amount.

Q. Prior to the time when the business went bad?

A. Yes.

Q. In 1949?

A. Yes. It went bad in 1948.

Q. In 1948? Did you tell Julius Rosenberg that you thought your husband wasn't getting enough salary?

A. I can't answer that just that way, Mr. Bloch. Julius Rosenberg told me in 1947 that he didn't care whether the business was a success or not, and I was very enraged. I said that David and Bernie had put all their earnings into that business. To them it meant something; they were earning a living, and he said he didn't care because he [fol. 1115] could get $10,000. or $15,000. as a front for any business for his activities. That was in 1947.

Q. As a front?

A. That is right.

Q. Do you know as a matter of fact that David Schein invested $15,000. when the Pitt Machine Products Company, Inc. was formed?

A. That is not the same thing, Mr. Bloch.

Q. I am not saying it was; I am asking you a question.

Mr. Saypol: I think Mr. Bloch is getting unduly exercised.

Mr. E. H. Bloch: I am not exercised; believe me, I am cool, or at least I hope I am.

Mr. Saypol: If you just keep calm, I think, your Honor, on this relatively insignificant issue we will have some light and get along.

The Court: I am glad to see that you are so calm this morning.

Mr. Saypol: I don't like to lose my sense of humor. On the other hand, this is a grave thing and I don't want the issue lost sight of. When we get these outbursts, we get away from the issue, and that is the reason why I say what I am saying, and when I think the time comes again, that I think the subject has been exhausted I shall rise and state [fol. 1116] so to your Honor.

Mr. E. H. Bloch: I am just going to say a few words, if your Honor please. Let me assure the Court——

The Court: No, I don't want to hear it. Proceed.

Mr. E. H. Bloch: I am not unduly exercised. I am not trying to badger the witness, but she left an implication in the last answer which I am trying to clear up.

The Court: Go ahead.

The Witness: I wasn't implying anything, Mr. Bloch.

The Court: She didn't imply anything. She said something.

The Witness: I can tell you exactly where it happened, where we were walking at the time.

By Mr. E. H. Bloch:

Q. I am asking you specifically whether it is not a fact that a man by the name of David Schein invested $15,000. in the Pitt Machine Products Company, Inc. at the time of its formation in the latter part of 1947?

A. But that wasn't——

Q. Now, will you answer?

The Court: Just answer that.

[fol. 1117] The Witness: Yes, he invested it.

Q. You are not trying to imply that David Schein was a front?

A. Oh, no.

Q. Are you?

A. Oh, no.

Q. He was a legitimate business man who was making a legitimate business investment, isn't that right?

A. That is right.

Q. And he was quite careful—if you know, if you don't, just say you don't—to take care of his interest by having all checks countersigned by him, isn't that correct?

Mr. Saypol: Don't answer that until I object. I object. It is a summation and it deals with something foreign to the issues in this case.

The Court: I sustain the objection.

Mr. E. H. Bloch: I respectfully except.

By the Court:

Q. Did you say there was no connection between the Schein investment and your statement that you made concerning Mr. Rosenberg's statement?

A. Yes.

Q. Where he said he could have the business as a front?

A. That is right.

By Mr. E. H. Bloch:

Q. Now as a matter of fact, Mrs. Greenglass, don't you know that your brother-in-law Bernie and your husband [fol. 1118] Dave and your brother-in-law Julius Rosenberg prior to 1947 drew equally share and share alike as far as salaries were concerned?

A. I know that.

The Court: Prior to, when was that?

The Witness: 1946, 1947, before G. and R. became Pitt Machine.

Q. Isn't it a fact that one of the complaints that was made by Julius Rosenberg against your husband was that he, Julius Rosenberg, was working too hard and that your husband was loafing on the job?

A. That is an untruth.

Q. Whether it is an untruth or not, did he make that complaint?

A. He complained about a great many things.

Q. I am asking you, Mrs. Greenglass, whether he complained specifically about this.

A. Among others, yes. Excuse me, Mr. Bloch, would you let me explain that?

Q. I am awfully sorry. I would be derelict in my duty if I permitted any gratuitous remark.

Mr. Saypol: Now——

The Court: Go ahead.

Mr. Saypol: I have an objection to the observation of Mr. Bloch as to gratuitous remarks.

The Court: No, no, I don't want to hear it, Mr. Saypol. I don't want to hear any more, Mr. Bloch. I don't want to [fol. 1119] hear any more. Go ahead and explain it.

The Witness: I want to say this: when they went into this thing my husband was the one who was going to teach other employees under the GI Bill of Rights, under the work and training program—he was going to teach them the work and train them to be machinists. Julius's job was to solicit business. He could hardly say that my husband was loafing. Julius was not working on machines. Only on occasions; he wasn't steadily at the machines in 1946 and 1947.

Q. Julius wasn't?

A. No.

Q. Julius wasn't a machinist?

A. But he claimed to be a big engineer.

Q. As a matter of fact, Julius was the one who went out and tried to get business?

A. So he couldn't say that my husband was loafing. If he got the business David produced it.

Q. Maybe you misunderstand me. I am not trying to say that your husband may not have had a justifiable grievance. All we are trying to find out is whether Julius Rosenberg complained that your husband was loafing, that is all.

A. I didn't say my husband had a grievance. I said Julius complained. He complained about so many things.

Q. And amongst the other things that he complained of [fol. 1120] was the fact that your husband David would disappear from the business during the day and go home and help you with the household duties, isn't that correct?

A. That is ridiculous. He came home for lunch.

The Court: Now you are missing the point. He is asking you whether Rosenberg ever said that; not whether it is true, but whether Rosenberg ever said that.

The Witness: Yes, he said it.

Q. Now, when you went down to Mr. Rogge's office, when did you first tell him about this claim that your husband had against your brother-in-law Julius based upon his promise to pay for the stock?

A. When?

Q. Yes, for the first time.

A. I found out inadvertently, I don't remember who told me, that Pitt Machine was being put up for sale—I do remember who told me: Someone came to my house and

told me and he said it was being put up for sale and the amount was——

[fol. 1121] Mr. E. H. Bloch: I object to this upon the ground that it is not responsive.

The Witness: I will tell you the name if you want.

Mr. E. H. Bloch: I am talking to the Court.

The Court: Just a moment.

Mr. E. H. Bloch: I asked a question, when for the first time did she tell——

By the Court:

Q. When for the first time did you tell Mr. Rogge about this?

A. I think that it was the end of July.

Q. 1950?

A. That is right.

By E. H. Bloch:

Q. And at that time your husband was in custody and in jail, was he not?

A. He was.

Q. And had been since the middle of June 1950?

A. Yes.

Q. And at that time Julius Rosenberg was already in jail, was he not?

A. That had nothing to do with——

Q. I didn't ask you whether it did; I am asking you whether that is the fact as of that time?

A. Yes, it is.

Q. Did you at any time go over to Ethel, your sister-in-law and make any request for the recovery of that money?

A. I did not.

[fol. 1122] Q. Did you?

A. No.

Q. How many times in all did you ask Mr. Rogge about this claim?

Mr. Saypol: I object to this.

The Court: Overruled.

A. I don't remember that.

Q. It was after June 1950, wasn't it?

A. Yes.

Q. How many times in all were you down in Mr. Rogge's office?

A. I never counted the times.

Q. There were many occasions?

A. When I felt the need to go or he wanted to see me I went.

Q. I asked you whether many occasions on which you went down to his office?

A. I don't know how frequently people go to their attorneys. I can't tell you whether I went frequently or infrequently.

Q. As a matter of fact, Mrs. Greenglass, wasn't there a time when you were down in Mr. Rogge's office almost every day?

The Court: For how long?

Q. For a period of a week or two?

A. When? At the beginning?

Q. Yes, at the beginning?

A. I don't think so. I wasn't able to walk very well.

Q. Was there any period when you were down at Mr. Rogge's office every day for a period of at least one week? [fol. 1123] A. I don't recall that.

Q. Would you say that you were not down there every day for a period of at least one week?

A. I couldn't say one way or the other.

Mr. Saypol: Just a minute.

The Court: She has answered.

Mr. Saypol: When counsel addresses it in the form he does, every day, does he intend to say every day for a period of continuous hours from morning to night? Or does he mean to say for five minutes on one day and three hours on the next?

The Court: You can bring it out on redirect.

Mr. Saypol: I object to the question.

The Court: Overruled.

Q. Now, in connection with the claim that you had, which your husband had against Rosenberg for the disposition of his stock, was that discussed in May 1950?

A. Yes.

Q. Did Rosenberg tell you at that time in May 1950 that he had contracted to purchase the shares of David Schein in that business and that he had promised to pay $5500. for that stock and had turned over to David Schein the sum of $1000. on account of the $5500. purchase?

A. I don't remember all the details. He told us he had contracted to buy his share.

Q. And did he tell you he had no money to make good [fol. 1124] any claim of yours because he had already paid over to Mr. Schein practically his last cent?

A. No.

Q. Did he say something like that in words or substance?

A. No.

The Court: Well now, what is the relevancy of this? I understood the purpose of the examination was to bring out that there might have been some claim. Now, I am not interested in any explanation of non-payment of the claim.

Mr. E. H. Bloch: No, that is not the purpose of the question. Maybe I should make myself clear and maybe I should address the bench. I don't know. If the Court feels I should do it from here, all right.

The Court: If it is going to be very short I will let you go on.

Mr. E. H. Bloch: I just want to convey to the Court——

The Court: I don't want you to go far afield.

Mr. E. H. Bloch: No. My purpose here is solely to refute——

Mr. Saypol: Well just a moment, if the Court please.

Mr. E. H. Bloch: Well, I will come up to the bench.

The Court: Go ahead.

[fol. 1125] By Mr. E. H. Bloch:

Q. Didn't you testify here on direct in substance that you had a conversation with Julius Rosenberg or your husband had a conversation with Julius Rosenberg at which you were present in which you and your husband were requested to leave the country and Rosenberg said he was going to flee the country also?

A. Yes.

Q. When did this conversation take place?

A. On May 24, 1950.

Q. And at that time on May 24, 1950 was there also a discussion of the claim that your husband had against Rosenberg for the disposition of his stock?

A. No. My husband said that we had a lot of personal debts in the family. He didn't say anything about his claim for the stock. When you are interested in leaving the country—had we been interested, we would not wait to get paid an investment. We didn't want to leave the people we owed money to in a lurch. They worked hard for their money.

[fol. 1126] Q. Of course you knew, did you not, that when you got this thousand dollars it was on the representation of your husband that he had personal debts and he wanted to pay them off, isn't that right?

A. It is not right.

Q. That is not right?

A. Oh, no.

Q. Nothing like what was said?

A. Do you want me to tell you what Mr. Rosenberg said?

Q. No, you will have an opportunity to tell, but I would like an answer to that question. Nothing like that was said?

The Court: Like what? I do not quite understand.

Mr. E. H. Bloch: Then will you read the preceding question and then read the last question, please, Mr. Stenographer?

(Record read.)

The Court: The question is whether your husband had represented to Rosenberg that he had personal debts that he wanted to pay.

The Witness: I thought Mr. Bloch was talking about investments.

Q. If you want it clarified, we will clarify it.

The Court: Let her answer it.

A. If it was a question of personal debts, yes, we had [fol. 1127] personal debts. We did not say that we wanted a return of investment, and he did not indicate that he wanted an investment.

The Court: Mrs. Greenglass, will you please talk a little slower.

Mr. E. H. Bloch: Maybe if the Court asked it——

Q. Let me ask it in as simple language as I know: Did your husband in the month of May, and particularly on May 24, say to Rosenberg in words or in substance the following: "I need money to pay my personal debts if you want me to get out of this country"?

A. He said part of that, yes.

Q. He did, and the fact remains that these personal debts were owed to these people that you described as having worked hard for their money and couldn't afford to lose that money, isn't that correct?

A. Yes, it is.

Q. And three of those people were members of a family called Feit, is that correct?

A. Yes.

Q. One of them——

A. Yes.

Q. Did your husband or you pay one single penny of that $1000. that you say you got from Rosenberg to pay these people that you say could least afford to forgive a debt or to lose any money?

[fol. 1128] A. We started to pay it as soon as my husband went to work for Arma, and with the thousand dollars we had—shall I explain what we did with it? Do you want me to explain?

Q. Yes, I would like you to explain what you did with the $1000.

A. We had bought furniture on the instalment plan. We paid that off. We paid off a debt, a loan to the National City Company. I paid off a typewriter that I had bought on the instalment plan. We paid a neighbor a personal debt. We used it for household expenses, and then $500. was put in the bank when I was in the hospital and I have used that to live on.

Q. So that outside of this one repayment to a neighbor of the personal debt you didn't use any of that money to pay the personal debts of your husband, isn't that correct?

The Court: Well, don't you consider these other debts personal debts that were paid off?

Mr. E. H. Bloch: I do, but I am wondering whether the witness or her husband did. That is what I am trying to find out.

The Court: Apparently you did not. Your question was phrased in such a way as to lead us to believe that you didn't.

Q. Do you make a distinction between the personal debts of your husband that we were talking about——

[fol. 1129] Mr. Saypol: Just a minute, will you please? The distinction, if any, is made by counsel and I submit that the subject——

The Court: Mr. Saypol, I think I understand the point. I understand his distinction and he hasn't even finished his question.

Mr. Saypol: I am sorry.

The Court: Let us wait until the question is finished.

Mr. Saypol: I object to the line of examination. It think it has been exhausted.

The Court: I will permit him to ask his question.

Q. Did you on May 24, 1950, make a distinction between the personal debts of your husband and household debts?

A. No, they were all our debts.

Q. So you did use the thousand dollars to pay your husband's personal debts——

The Court: Part of it.

A. Yes.

Q. Part of it?

The Court: We have already got that. Let us get on.

Q. And you say——

Mr. E. H. Bloch: I am almost through——

[fol. 1130] Q. —and you say that $500. was put in the bank?

A. Yes.

Q. This was on May 24th?

A. No, this was on June 14th.

Q. You mean the $500. was put in the bank on June 14th?
A. That is correct.
Q. Between May 24, 1950, and June 14, 1950, did you make any attempt to pay off any of the people outside of the debts that you have already recounted to whom your husband owed money?
A. Between May 24th and June 14th?
Q. Yes.
A. The $500. that we put in the bank was going to pay for a bungalow that my husband hired in the country. The money was deposited after I was already in the hospital. I went in the hospital on June 13th. My husband put the money in the bank so that it would not be in the house while he was working and I was gone. Two days later my husband was taken into custody. We could not pay off any debts.
Q. Is that your full answer?
A. Yes, it is.
Q. Now one last question. When you had this $4000. wrapped in this brown container in your house——

Mr. Saypol: Brown container?
Mr. E. H. Bloch: Container—isn't that right? I think there was an argument as to whether it was a container or a bag.
[fol. 1131] Mr. Saypol: That was "paper".
Mr. E. H. Bloch: "Paper"—any word you want.
The Court: Let us call it paper container. Go ahead.

Q. —paper container——

Mr. Saypol: No, not a container.
Mr. E. H. Bloch: A wrapper—is that all right, Mr. Saypol? All right.
Mr. Saypol: I object to the question as it was put.
The Court: Go ahead.
Mr. E. H. Bloch: I will reframe it.

Q. When you had in your house this paper wrapper in which there was contained $4000. did you get that out of your house into your brother-in-law's hands in order to secrete it from the FBI?
A. I don't think that was quite the reason.

Q. Was that one of the reasons?

A. Not exactly, no.

Q. Did it enter your mind that you did not want to have that money in your house in the event that the FBI came around and searched your house and found it?

A. No. I think we wanted to tell them the true story and explain how we get the money, before they found the money and questioned us.

[fol. 1132] Q. Nobody stopped you after you had that $4000. to come down here to the Federal Building and tell the FBI, "Look, I have got $4000."?

The Court: Don't answer it.

Mr. Kilsheimer: I object to that.

The Court: Don't answer that. It is argumentative.

Mr. E. H. Bloch: I respectfully except.

That is all.

Wait just one second, please.

My dad points out just one question which he thinks I overlooked.

Q. Were you told by Julius Rosenberg on May 24th, 1950, that he couldn't give you any money on the claim that your husband made against him for the disposition of the stock, because he had given Schein $1000. and he didn't have any more cash at hand?

A. No, my husband didn't ask for payment on his stock. Julius Rosenberg said that he would bring my husband $6000. more. That was not coming from the business, Mr. Bloch.

Q. What was not coming from the business?

A. $6,000., that he promised us.

Q. Yes, but I didn't ask you that.

A. Well, it wasn't being paid for the investment.

[fol. 1133] The Court: Who was it coming from?

The Witness: From the Russians, for us to leave the country.

The Court: Is there any redirect?

Mr. Saypol: Will your Honor call a recess? We will decide that.

Mr. Kilsheimer: I wonder whether the defendant Sobell wants to cross-examine before we look into any redirect?

Mr. Kuntz: No cross.
The Court: We will take a short recess.

(Short recess.)

Mr. Kilsheimer: Your Honor, the Government does not have any redirect from the last witness.
The Court: Very well, the witness is excused then.

Call your next witness.

The Clerk: Dorothy Abel.

Dorothy Abel, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. Mrs. Abel, will you sit back in your chair and try to keep your voice up so that all the jurors and counsel can hear you. Where do you live, Mrs. Abel?
[fol. 1134] A. 87 Columbia Street.

The Court: Is that Manhattan?
The Witness: Yes, that is.

Q. You are married?
A. Yes, I am.
Q. What is your husband's name?
A. Louis Abel.
Q. You have no children?
A. I haven't.
Q. Are you related to Ruth Greenglass?
A. Yes, I am; I am her sister.
Q. What was your maiden name?
A. Dorothy Printz.
Q. Mrs. Greenglass' maiden name was Ruth Printz; is that right?
A. That's right.
Q. In the early part of 1945 where were you living?
A. I was living at 266 Stanton Street, Manhattan.
Q. With whom were you living?

A. With Ruth Greenglass.

Q. Do you know the defendant Julius Rosenberg?

A. Yes, I do.

Q. Do you know his wife Ethel Rosenberg?

A. Yes, I do.

Q. Do you see them seated at counsel table here?

A. Yes, I do.

Q. Did there come a time in the early part of 1945 when you saw Julius Rosenberg at your apartment, at 266 Stanton Street?

A. Yes.

Q. Can you fix the time of this meeting, as best you [fol. 1135] can?

A. It was in the latter part of January, the early part of February.

Q. Either in the latter part of January or the early part of February?

A. Yes.

Q. Did Rosenberg come to your apartment?

A. Yes, he did.

Q. What time of day did he come there?

A. It was in the evening.

Q. Who was present in the apartment when Rosenberg came?

A. Ruth and myself.

Q. Can you tell the Court and jury what occurred on that occasion when Rosenberg came to your apartment?

A. Well, we exchanged pleasantries and then Julie asked me to go, to leave the room, take a book and leave the room.

Q. Did he state why he wanted you to leave the room?

Mr. E. H. Bloch: I object to the form of the question. I object to it upon the ground that it is leading and suggestive.

The Court: All right, sustained.

What else did he say?

The Witness: Well, he asked me to take a book with me, and I said all right, I would go into the bedroom; he said no, he wanted me to go into the bathroom and close the door, and I did.

[fol. 1136] The Court: Well, did he say anything about what he wanted to do?

The Witness: He said he wanted to speak to Ruth privately.

By Mr. Kilsheimer:

Q. And you went into the bathroom and closed the door; is that right?

A. I did.

Q. Did you from time to time have conversations with Julius and Ethel Rosenberg concerning Russia?

A. Yes, I did.

Mr. E. H. Bloch: Objected to, if the Court please.

The Court: Overruled.

Mr. E. H. Bloch: Upon the ground it is incompetent, irrelevant and immaterial, and injects an issue that is not proper within the confines of the issue in this case.

The Court: One of the issues in this case is whether or not they intended to give an advantage to Russia. On that issue I take the evidence.

Mr. E. H. Bloch: I respectfully except.

Q. Did these conversations take place on more than one occasion?

A. Yes, it did.

Q. Now, is there——

Mr. E. H. Bloch: I am sorry, I also object, if the Court please, upon the ground that the question is general.

[fol. 1137] The Court: All right, overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Does one of these conversations stand out in your mind?

A. I remember a time when the four of us, Ruth, David and Julie and Ethel and I were going out to a show, and they were talking, Julius and Ethel were speaking to me and—they were—they were comparing our form of Government to the form in Russia, and they—they thought—they said that they, Russia was the ideal form of government, the Russian form of government. That is all.

Q. Can you fix the time when this conversation took place, as best you can?

A. I think it was in 1944, during the winter time. That is about all I can remember.

Mr. Kilsheimer: Thank you.
You may cross-examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. You say, the winter time of 1944; could you be more specific?

A. No, I can't.

Q. How many times in all have you had discussions with the Rosenbergs about political affairs?

A. I wouldn't call them "discussions". Whenever I met them, they just spoke about it.

Q. How old are you now?

A. 23.

[fol. 1138] Q. And in 1944?

A. I was 16.

Q. Did you ever discuss with them, or did they ever discuss with you any matters concerning legislation that was before the Congress of the United States?

A. No, they did not.

Q. Did you discuss any domestic matters of the United States with them, or did they discuss that with you?

A. No, they did not.

Q. In the course of this conversation in which you stated that the Rosenbergs told you that the Russian form of Government was the ideal form of Government, did they say anything specifically about the United States form of Government?

A. They didn't think that it compared at all with the Russian form of Government.

Q. Can you tell us specifically what criticism they made of the United States form of Government?

A. Well, they said that it was a capitalistic form of Government.

Q. Yes?

A. That is about all I can remember.

Q. What else?

The Court: Is that the reason they assigned for preferring the Russian form of Government?

The Witness: Yes.

The Court: Was there discussion of the relative merits of the capitalistic form of Government as against com-
[fol. 1139] munistic form?

Mr. E. H. Bloch: Pardon me, if the Court please, with the utmost deference and respect to the Court, I would like to register my objection to the Court's questions at this time.

The Court: I will withdraw the question. Go ahead.

Q. Now, if that is all you remember, tell us if you remember more? Please tell us. Did the Rosenbergs say anything to you on that occasion with reference to our form of government, more than a criticism that it was a capitalistic form of government?

A. I don't remember.

Q. Had you taken any courses in political economy?

Mr. Saypol: Is this at the age of 16?

Mr. E. H. Bloch: That is what I am going to find out.

Mr. Saypol: I hardly think that is possible. I think it is an improper question.

Mr. E. H. Bloch: It is possible now, you know, Mr. Saypol.

The Court: It is proper. It might not be likely that she did it, but it is proper.

Q. Did you take any courses in political economy prior to the time when this conversation with the Rosenbergs is alleged to have occurred?

A. No, I did not.

[fol. 1140] Q. Did you take any courses in history prior to the time this conversation is alleged to have occurred?

A. Yes, I did.

Q. In high school?

A. Yes, I did.

Q. Did you take any courses in civics?

A. No, I did not.

Q. Did you take any courses in economics?

A. No, I didn't.

Q. I am talking prior to the time of the alleged conversation?

A. No, I did not.
Q. Did you participate in the conversation?
A. No, I didn't.

Mr. E. H. Bloch: That is all.
Mr. A. Bloch: That is all.
The Court: Is that all? Is there any redirect?
Mr. Kilsheimer: No redirect, your Honor.
The Court: Very well, step down.

(Witness excused.)

The Clerk: Louis Abel.

[fol. 1141] Louis Abel, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. Mr. Abel, will you keep your voice up so that all can hear you. Mr. Abel, are you a veteran of the last war?
A. I am.
Q. And what service did you serve?
A. The Navy.

Mr. E. H. Bloch: If the Court please, I object to this upon the ground that it is incompetent, irrelevant and immaterial to the issues in this case, and only is an attempt to build up this witness out of proportions to any testimony that he may give. I am willing to make that statement in support of my argument.

The Court: I don't know what testimony he is going to give.

Mr. E. H. Bloch: Well then, I will confine it to the general objection, your Honor, that this question and this answer——

The Court: I have never heard an objection to whether a man was in the Armed Services. That is a peculiar type of objection that I have ever heard. I am overruling it.

Mr. E. H. Bloch: May I just say this to the Court: The

reason I asked, is that in a number of trials, I have never [fol. 1142] been permitted to ask it.

The Court: Well, I permit it.

Mr. E. H. Bloch: All right, I respectfully except.

Mr. Kilsheimer: Will the stenographer kindly read the last question.

(Last question and answer read.)

Q. For what length of time were you in the Navy?

A. Approximately two years.

Q. Did you serve overseas?

A. I did.

Mr. E. H. Bloch: I assume, your Honor, that my objection goes to this entire line?

The Court: Yes.

Q. Are you related to David Greenglass?

A. I am.

Q. In what way?

A. I am his brother-in-law.

[fol. 1143] Q. Will you keep your voice up, Mr. Abel, please?

You know the defendants Julius and Ethel Rosenberg?

A. I do.

Q. Do you recall the time when David Greenglass was arrested last June?

A. I do.

Q. And about when do you recall that occurred?

A. On June 16th.

Q. Now sometime prior to the date when David Greenglass was arrested did you see David Greenglass?

A. I did.

Q. And where did you see him?

A. In his home.

Q. About how long—about what length of time prior to the time he was arrested?

A. Oh, it must have been about close to a week before he was taken in.

Q. On that occasion did you have a conversation with David Greenglass?

A. I did.

Q. And as a result of that conversation, what happened?
A. I——

Mr. E. H. Bloch: I object. I object upon the ground that it is too general and it is not binding upon the defendant.

Mr. Kilsheimer: If your Honor please, I am not asking for the conversation. I am just asking for what occurred after they had the conversation.

The Court: All right, just tell us what you did. Don't [fol. 1144] tell us what you said to anyone.

Mr. Kilsheimer: No, I did not ask that, your Honor.

Mr. E. H. Bloch: All right.

A. As a result of that conversation I held some money for David.

Q. How was that money given to you?

A. Well, It was enclosed in a manila—in brown manila paper. It was about so long (indicating), about so wide (indicating), and about that thick (indicating). It had string around it and possibly some scotch tape on the ends.

The Court: Are you describing the paper or are you describing the package as it was wrapped?

The Witness: I am describing the package as it was wrapped.

Q. What did you do with that package after you received it?

A. I took it home and I hid it in a hassock that I have, and I left it there.

Q. Do you still have the package in the hassock?

A. No, I don't.

Q. Will you tell me what you did with the package after you put it in the hassock?

A. Well, the—about two in the morning the night after David was arrested, he phoned me and asked me to engage his attorney, Mr. Rogge.

The following morning I went to Mr. Rogge and I [fol. 1145] explained to him that Dave was in trouble, that he had been picked up by the FBI and—well, I gave him as much information as I knew at the time.

Mr. Rogge went down to see Dave and when he got back he said that David informed me to give him the package, which I did.

Q. Now to whom did you give the package?
A. I gave the package to Mr. Fabricant and Miss Pegano, his secretary.

The Court: Mr. Fabricant is a partner of Mr. Rogge?
The Witness: That is correct.

Q. I show you Government's Exhibit 10 in evidence and ask you if you recognize this exhibit (handing to witness)?
A. That's the package—that's the paper that the money was wrapped in.
Q. When did you turn this package over to Mr. Fabricant and Miss Pegano?
A. The same day, on the morning that David called me up—that is, the following morning.

Mr. Kilsheimer: You may cross-examine.
Mr. E. H. Bloch: I just want to ask him one question.

Cross examination.

By Mr. E. H. Bloch:

Q. Can you tell us exactly the day that you received [fol. 1146] this package which you just identified here, Government's Exhibit 10 (indicating)——
A. No, I can't.
Q. Let me finish the question, then you can answer.
A. All right.
Q. —from your brother-in-law, David Greenglass?
A. No.
Q. You can't?
A. No, I can't.
Q. You said it was about a week before his arrest, is that your best recollection?
A. Yes. It might be a little more——

The Court: Speak up, please.

A. It might be a little more, a little less. I can't actually recall.
Q. But it was in the early part of June 1950, is that correct?
A. That's correct.

Q. Now when you got this package you then took it to your home?

A. That is correct.

Q. And you secreted it in a hassock, did you say?

A. That's correct.

Q. Now just tell us the operation that you performed in the secretion of this money.

—. I merely took it and stuck it in the bottom of the hassock. There was nothing but a slight piece of paper. I took that off, put it in and closed that up.

Q. Maybe I am confused about what a hassock is. A has-
[fol. 1147] sock is an upholstered stool, isn't it?

A. That is correct.

Q. And isn't the hassock bound by leather or some other material?

A. That is correct.

Q. Did you tear off any of the material and stick the package in and then sew it up or attempt to make it look whole again?

A. No.

Q. Well, was this hassock that you are talking about stuffed with some material?

A. No, it wasn't.

Q. Well, will you describe to the Court and jury what kind of a hassock it was?

A. Well, we were under the impression when we bought it that it was stuffed with material but obviously when I opened it, it wasn't. It had nothing but lined cardboard inside.

Q. And could you turn it over and see open spaces?

A. No. If you took that piece of paper underneath away, you could, yes.

Q. So, in other words, there was a piece of paper on the bottom of the hassock which rested on the floor——

A. That is correct.

Q. —and then you tore off that piece of paper?

A. That's right.

Q. And then you put this package in it, and then what did you do? Did you paste the paper back again?

A. No, I didn't.

[fol. 1148] Q. Well, did you leave it open?

A. I may have put a piece of Scotch tape on it so when you moved the hassock, it didn't move.

Q. Now was it your intention at the time you put this package in this hassock to put it in a place where nobody would know where it was?

A. Of course.

Mr. E. H. Bloch: I think that is all.

Cross-examination.

By Mr. A. Bloch:

Q. Who was present when you received that package?

A. Pardon?

(Question read.)

A. I believe it was just David—I am not certain.

Q. Your sister-in-law was not present, was she?

A. I don't recall.

Q. Did you ever open the package?

A. Yes, I had occasion to open it once.

Q. Did you open it at the time you received it?

A. No, I didn't.

Q. When for the first time did you open it?

A. Well, It must have been a day or so later, Ruth asked me to give her a——

Q. No, I did not ask you——

Mr. Saypol: I ask that the witness be permitted to finish, your Honor.

Mr. A. Bloch: No, I do not want him——

[fol. 1149] The Court: All right, you just tell him when.

Mr. A. Bloch: Will you ask that question—will you repeat that question, Mr. Stenographer?

The Court: When did you open it? You understand the question.

The Witness: Yes. It was about a day or so later that I opened the package.

Q. And then you found for the first time that there was money in it?

A. That is correct.

Mr. A. Bloch: That is all.

The Court: Any redirect?
Any further cross?

(No response.)

Redirect examination.

By Mr. Kilsheimer:

Q. When you say you found for the first time there was money in the package when you opened it a day or two after you received it, that was the first time that you knew that of your own knowledge, is that right?
A. That is true.

Mr. Kilsheimer: That is all, your Honor.
The Court: All right, you are excused.

(Witness excused.)

The Court: Next witness.
The Clerk: Harry Gold.

[fol. 1150] Harry Gold, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. Now Mr. Gold, the acoustics in this particular courtroom are not too good, so if you keep your voice up so that all the jurors can hear, it will help a great deal.
What is your occupation?
A. I am a biochemist.
Q. Now where were you born?
A. I was born in Berne, Switzerland.
Q. When?
A. On December 12th, 1910.
Q. When did you come to the United States?
A. I came to the United States in July of 1914.
Q. And did you come with your family?
A. Yes, I did.

Q. Now were you naturalized at some time subsequent?
A. Yes. I was naturalized on my father's papers in the year 1922.
Q. Do you have—is your father living?
A. Yes, he is.
Q. Is your mother living?

Mr. E. H. Bloch: If the Court please, has this any relevance to the issues in this case?
The Court: This is background. It is always proper in [fol. 1151] a case, within limits. The jury is entitled to know, and I am entitled to know, what type of a witness we are dealing with. We want to know something about him.
Mr. E. H. Bloch: All right, your Honor, I agree. The only reason I got up at this point is to follow, I hope, the Court's admonition that the trial not be strung out too long.
The Court: All right.
Mr. E. H. Bloch: That was the sole motivation, let me assure you.
The Court: Just remember that in cross-examination.
Mr. A. Bloch: I will try.

(Question read.)

A. No, she is not. My mother died in 1947.
Q. Do you have any brothers or sisters?
A. I have one brother.
Q. How old is your father?
A. My father is 75 years of age.
Q. And what is his occupation?
A. My father is a cabinet maker.
Q. And is he occupied at the present time?
A. My father is not working right now. He did work up until about six months ago.

[fol. 1152] Mr. E. H. Bloch: Now, if the Court pleases, now I object for a different reason. I object upon the ground that this background material is being elicited for the purposes of building up a sympathy with the witness and has no relation to the issues in this case. I am not saying that is the object of the prosecutor but I think that is the object of the effect.
The Court: Overruled.
Mr. E. H. Bloch: I respectfully except.

Q. Now will you briefly sketch your educational background?

A. I attended the public schools in Philadelphia and graduated from the South Philadelphia High School in the summer of 1928.

In 1930 I entered the University of Pennsylvania and left there about March of 1932.

From 1934 to '36 I was a student at Drexel Institute of Technology in the evening. I received the diploma in chemical engineering in June of 1936.

From 1938 to 1940 I attended Xavier University in Cincinnati, Ohio. I graduated from Xavier in June of 1940 and received the degree of Bachelor of Science, summa cum laude.

At various times from 1936 on, I took a number of specialized technical courses relating to the chemical field, [fol. 1153] and in addition I had a course in practical psychology.

Q. Now will you tell me something about your background of employment?

A. When I left high school in 19—in the summer of 1928, I was employed by a firm called Gifterafters—that is one word—a wood-working firm in Philadelphia. I left the Gifterafter firm in December of 1928 and began a period of employment with the Pennsylvania Sugar Company. I was employed by the Pennsylvania Sugar Company from January of 1929 over a period of 17 years up until February of 1946. This stretch was broken up on two occasions by [fol. 1154] leaves of absence so that I could go to college, and on one occasion in December of 1932 I was laid off.

Q. Now you are the Harry Gold, are you not, that is named as a co-conspirator in the indictment which is—in the indictment which includes the Rosenbergs and Sobell and Yakovlev?

A. Yes, I am.

Q. That is in the indictment in the instant case.

A. Yes.

Q. Now do you stand convicted of any crime?

A. Yes, I do.

Q. Of what crime?

A. I stand convicted of espionage.

Q. And in what court does that conviction stand of record?

A. That conviction stands in the Federal Court in Philadelphia, Pennsylvania.

Q. Do you recall the date?

A. I pleaded guilty to the charge of espionage on July 20th, 1950.

Q. Now what sort of espionage was it?

Mr. E. H. Bloch: I object to the question as too general, not binding upon these defendants.

The Court: I will have to sustain that.

By the Court:

Q. Was that indictment consummated by a sentence?

A. Yes, it was, your Honor.

Q. There is nothing left open now in that court?

[fol. 1155] A. There is nothing left open in that court, your Honor.

Q. So far as you know is there anything left open in this court with respect to a plea on your part or conviction?

A. There is nothing so far as I know, your Honor, that is left open in this court against me.

Q. So you will not come before any court any longer for any sentence, so far as you know?

A. So far as I know, your Honor, I shall not.

Q. What was the sentence that was imposed upon you in Philadelphia?

A. I was given a sentence of 30 years in the Federal Penitentiary.

The Court: Proceed.

By Mr. Lane:

Q. Do you know Anatoli Yakovlev?

A. Yes, I do.

Q. When for the first time did you meet Anatoli Yakovlev?

A. I met Anatoli Yakovlev in March 1944.

Q. Where did you meet him?

A. I met Yakovlev in New York City. It was on the north

side of 34th Street between Seventh and Eighth Avenue, and somewhat closer to Eighth Avenue. The exact spot was in front of the bar entrance of a Childs Restaurant.

The Court: What date did you say that was?

The Witness: That was March of 1944, your Honor.

[fol. 1156] The Court: All right.

Q. Now, did you have a conversation with Yakovlev at that time?

Mr. A. Bloch: One minute. I object to it on the ground that it is not within the time circumscribed by the indictment. The indictment is alleged to have begun in June 1944.

The Court: I suggest that you read the opinion of this Circuit Court in United States v. Dennis, et al. which deals with that subject directly.

Your objection is overruled.

Mr. A. Bloch: Exception.

(Question read.)

A. Yes, I did.

Q. And as a result of that conversation what did you do?

A. I continued in my espionage work for the Soviet Union with——

Mr. E. H. Bloch: I——

A. —Anatoli——

Mr. E. H. Bloch: I am sorry but I have got to get up to object to this. I think it is damaging evidence, and I think it is incompetent, irrelevant and immaterial, and I believe that the witness is using conclusory words. I submit that this is not binding upon any of these defendants.

[fol. 1157] The Court: May I have the question?

(Question read.)

The Court: A conversation with Yakovlev, is that it?

Mr. Lane: That is correct, your Honor.

The Court: Yakovlev is named as a defendant and co-conspirator.

Mr. E. H. Bloch: I understand that. I direct your Honor's attention to the language——

The Court: Well——

Mr. E. H. Bloch: —to the language that he used.

The Court: Well, I can't deal with that at this point.

Mr. E. H. Bloch: No, but the point is this: Is this the conversation or is this, as I understood it, what the witness is stating to be the fact in narrative form?

The Court: He is telling you what he did as the result of a conversation with Yakovlev.

Mr. E. H. Bloch: That is right.

The Court: The objection is overruled.

Mr. E. H. Bloch: I respectfully except.

[fol. 1158] (Paper marked Government's Exhibit 11 for identification.)

Mr. E. H. Bloch: I object further, if the Court please, upon the ground that no proper foundation has been laid for the introduction of the phrase "continuing espionage for the Soviet Union", and I ask that the answer be stricken out.

Mr. Lane: If the Court please, we will connect that very shortly.

The Court: All right.

Mr. E. H. Bloch: And I think that is the proper way to do it, your Honor.

The Court: All right. Why don't you go to it, Mr. Lane.

Q. Now I show you Government's Exhibit 11 for identification and ask you if you recognize the man depicted in the picture?

A. Anatoli Yakovlev.

Q. Now, for how long a period of time did you work with Yakovlev?

The Court: Are you introducing that?

Mr. Lane: Not yet, your Honor.

A. I worked with Yakovlev for a period of almost three years. From March of 1944 until late December 1946.

Mr. Lane: Now I offer Government's Exhibit 11 for identification in evidence.

[fol. 1159] Mr. E. H. Bloch: No objection.

(Government's Exhibit 11 for identification received in evidence.)

The Court: Show it to the Jury.

Q. Now, did you have several conversations with Yakovlev after the middle of June 1944?

A. Yes, I did.

Q. And in any of those conversations did Yakovlev identify himself to you?

A. No, he did not. I knew Yakovlev only——

Mr. E. H. Bloch: I move to strike out everything after he did not, on the ground the witness has fully answered.

The Court: All right. He didn't identify himself to you. Very well. Did you know the identity of Yakovlev?

The Witness: I knew Yakovlev only—I didn't know him as Yakovlev, your Honor.

Q. What name did you know him by?

A. I knew Yakovlev as John.

Q. Now, for how long a period were you engaged in Soviet activities?

Mr. E. H. Bloch: I object to the form of the question on the ground that it presupposes a state of facts not proven.

The Court: On that ground I will overrule it. The wit- [fol. 1160] ness knows.

By the Court:

Q. Do you know of your own knowledge whether or not you were engaged in Soviet espionage work?

Mr. E. H. Bloch: I object to the Court's question.

The Court: Overruled.

Mr. A. Bloch: May I state the ground of my objection?

The Court: Is it a ground other than the one urged by Mr. Bloch, Jr.?

Mr. A. Bloch: It is.

The Court: I will hear it.

Mr. A. Bloch: I object to the term "Soviet activities" as being too general and may elicit answers which are entirely impertinent and incompetent to this issue. Soviet activities——

The Court: My question merely calls for a yes or no answer. So it couldn't elicit any general or any great statement from the witness.

Mr. A. Bloch: Except that it introduces a topic that is too general and should not in my opinion, in my humble opinion, be mentioned unless there is some proof offered as to what activities are referred to .

The Court: The objection is overruled.

Mr. E. H. Bloch: I respectfully except.

[fol. 1161] Mr. A. Bloch: I except.

(Last question read.)

A. I was engaged in espionage work for the Soviet Union from the spring of 1935 up until the time of my arrest while I was working at the heart station of the Philadelphia Hospital. This arrest took place in May.

Mr. E. H. Bloch: If the Court please, I move to strike out that part of the answer in which the words "Soviet espionage" are used upon the same ground urged before in support of my argument——

The Court: Your motion is denied.

Mr. E. H. Bloch: (Continuing) —on the objection.

Mr. A. Bloch: I move to strike out that part of the answer which refers to the Soviet Union, as there is no proof adduced as to who the Soviet Union is, and how he knows it was the Soviet Union.

The Court: Your motion is denied.

Mr. A. Bloch: Exception.

Q. Now, during this period of time did you have superiors working with you?

A. Yes, I did.

Q. Who was your Soviet superior in June 1944?

Mr. E. H. Bloch: Pardon me. I don't want to get up. I just want it understood, your Honor, that I am objecting [fol. 1162] to this entire line of questioning in so far as the word Soviet, or Soviet Union, or Soviet espionage or Soviet activities are used.

The Court: Are you saying, Mr. Bloch, that you would rather have this witness tell you how he arrives at the conclusion that he was engaged in espionage work for the Soviet Union? Would you rather have that?

Mr. E. H. Bloch: Are you asking my personal opinion?

The Court: Yes. Is that what you are asking? Do I understand you are asking for that? You don't want the conclusion?

Mr. E. H. Bloch: May I respond to your Honor's question?

The Court: Well, I assume that you may.

Mr. E. H. Bloch: I want to do it.

The Court: Well then do it.

Mr. E. H. Bloch: I want to differentiate myself as a person, a personality from myself as acting as counsel for a defendant in a criminal case.

The Court: My question doesn't call for that type of reply. My question doesn't call for that.

Mr. E. H. Bloch: I say yes, your Honor. I believe that this defendant is entitled to competent proof on each and every essential allegation of the indictment and that is the [fol. 1163] reason——

The Court: In the interest of your client you prefer to have this man detail all of his Soviet work, is that right?

Mr. E. H. Bloch: No, I am not going to say——

The Court: Is that what you are asking?

Mr. E. H. Bloch: No. I am asking for a proper foundation to be laid from which the Court and jury may infer that this witness was engaged in what he characterizes——

The Court: Before I go ahead, I want to make certain that I understand what you are asking for. You therefore say that before this witness can give what you call conclusions——

Mr. E. H. Bloch: Yes.

The Court: That you would like to have from the witness the steps which he took which finally caused him to arrive at the conclusion which he testified to here in court today.

Mr. E. H. Bloch: Now if the Court please, before I respond to that, I want to have an opportunity to consult with co-counsel because there are many considerations involved, one of which may be the shortening——

The Court: Do you want to withhold your objection then for the time being or do you want to have your conference right now?

[fol. 1164] Mr. E. H. Bloch: May we have it now?

The Court: Go ahead.

Mr. E. H. Bloch: We will try to make it as brief as possible.

(Conference among defense counsel.)

Mr. E. H. Bloch: I have an answer for your Honor. Counsel for the defendants are unanimous in demanding competent proof on each and every essential element of the crime, including the particular subject matter with which we were engaged in discussion.

The Court: Well, you can give us now, Mr. Gold, in view of the request made by counsel for the defendants, just the steps that you took which you say led you to believe that you were engaged in espionage for the Soviet Union.

Mr. E. H. Bloch: Well, if the Court please, in connection with the Court's formulation, you say "which led you to believe".

The Court: That is correct.

Mr. E. H. Bloch: What we are insisting upon is the demonstration and proof of facts, not the state of mind of the witness.

The Court: Yes. You just give the facts which led you to believe that you were engaged in Soviet espionage.

[fol. 1165] Mr. Kuntz: Wait a minute. May I object to the portion of your Honor's question, in view of the fact that a conference was held on this line. I think if the stenographer will read it, that you put a preamble to your question, in which you said in substance "Will you give us what counsel wants", and I ask that that be read now so that I can formulate my objection.

The Court: Yes, and I want you to understand that it is being done because you have requested it. If you would have objected to this, I would have sustained your objection to giving these steps, because there may be some question of prejudice, but in view of the fact that you have asked for it, I want the record to be clear that you objected to conclusions, you wanted to have each and every step which led to that conclusion, and in view of that objection and in view of your conference and in view of the statement made by Mr. Bloch on behalf of all counsel, I understand that counsel are asking for the steps which led to the conclusion.

Mr. Kuntz: May I respectfully ask that your Honor's remarks be stricken from the record?

The Court: Oh, no.

Mr. Kuntz: May I ask?

The Court: I say no, it won't be stricken.

Mr. Kuntz: No, may I ask that it be stricken?

[fol. 1166] The Court: You have asked it, haven't you?

Mr. Kuntz: All right.

Now, I state again, if your Honor please, for this record, that counsel—I have not heard Mr. Bloch or any counsel engaged in the trial in this case for the defendants, asking Mr. Gold for anything, not for a single solitary item. All I heard——

The Court: That is true. They didn't ask Mr. Gold. They addressed their remarks to the Court.

Mr. Kuntz: I did not hear any remark addressed, to the Court, asking for anything from this witness. All I heard was, and all that I will participate in, is objections to what may be incompetent evidence or conclusory evidence, any evidence to which we think we are entitled to object. That is all I heard so far. Then I have a record here in which it appears that counsel somewhere requested certain information from this witness we did not call.

The Court: Mr. Kuntz——

Mr. Kuntz: May I finish my argument?

The Court: Mr. Kuntz, no, you may not. It is a lot of gibberish. As I understand what you are saying you are saying that there was an objection to the conclusion. That was the objection. That is the legal objection. That is a good legal objection.

[fol. 1167] Mr. Kuntz: That is correct.

The Court: The way to overcome an objection to a conclusion is to have a witness testify to the facts. That is what I understand is the way to overcome an objection to a conclusion. In view of the particular subject matter that is involved here, I hesitated to have the witness proceed with testimony on the facts until all counsel understood what might come out as a result of it. That is the way the record stands right now.

Mr. Kuntz: May I respond?

The Court: Yes.

Mr. Kuntz: I have been on this side of the table for a number of years, if your Honor please, and as I understand this, not as your Honor has stated it, that when an objection

is made to a question because it calls for a conclusion, if that objection is well taken, the Court usually says "objection sustained", and then I think another question is put to the witness. If that other question, whatever it might ask for, is also objectionable, I usually get up and object to it.

The Court: Very well, the Court saved you time.

Mr. Kuntz: May I——

The Court: The Court put that question.

Mr. Kuntz: May I——

[fol. 1167a] The Court: No, the Court put that question, Mr. Kuntz, and don't give me any course of instruction as to what is usually done in a courtroom. This is the way I am running this courtroom, Mr. Kuntz, and I think I understand the way a courtroom should be run. I don't care to hear anything further from you. Your objection is noted.

Mr. Kuntz: Thank you.

[fol. 1168] The Court: Now, Mr. Bloch, I ask you, shall the witness now detail steps that led to the conclusion?

Mr. E. H. Bloch: I hope your Honor will not put the burden upon me, so that anything I may say may be inferred as a waiver of any legal objections. I certainly follow the Court's line of thinking and I understand that the Court feels that a question calling for a conclusion is improper, and an objection made is a valid one.

Now, I think what the Court is doing is to have the witness state facts from which the Court or the jury may infer the ultimate fact, as to whether or not this defendant——

The Court: That is correct.

Mr. E. H. Bloch: All right. Now, all that I am saying, if the Court please, is that the question that I think your Honor propounded just now, the last one that you propounded to the jury, I think that question is objectionable, for the sole reason—I am going to even limit it—for the sole reason that what the Court is asking this witness is the facts from which he had reason to believe that he was engaging in espionage. Now I submit that what is proper is to find out whether in fact he did, not whether he believed he did. I think it is for the jury to infer whether he did or not, not [fol. 1169] whether the witness believed he did. Do I make myself clear?

The Court: Yes, you make yourself clear, but I don't

think you are correct, because the witness is the one who said that he was engaged in it. You took an objection.

Mr. E. H. Bloch: That is correct.

The Court: You took an objection, because you objected to his conclusion that he believed that he was engaged in it, so now he is going to give you the facts which made him make up his mind that he was engaged in it.

Mr. E. H. Bloch: May I just, not retort, but make this statement in addition: The indictment charges that these defendants conspired to transmit information to the advantage of a foreign power. Now I am assuming that this line of questions by the prosecution is to elicit that there was a foreign power involved, and I believe that is a substantial fact that must be proved.

Now, in my estimation, if the Court please, it is the fact as to whether or not a foreign power is involved, that determines the relevancy of the information that is sought to be elicited here, and not whether or not this witness had reason [fol. 1170] to believe that a foreign power is being involved, and I hope now I have myself a little clearer in my thoughts about the reason for my objection.

The Court: I think you have gone round the table, and the net result——

Mr. E. H. Bloch: Maybe I have been peripatetic, but I hope I have covered it as fully as I can.

Mr. Lane: If the Court please, I think perhaps we can simplify this a little bit by my withdrawing my question and I will come back to it a little later, with the Court's permission, and I think perhaps in that way we may be able to obviate Mr. Bloch's objection.

The Court: All right.

The fact of the matter is that you did plead guilty to an indictment charging you with espionage for the Soviet Government; is that correct?

The Witness: That is correct, your Honor.

The Court: All right.

By Mr. Lane:

Q. Now, you have identified the picture of Yakovlev; now will you give a description of Yakovlev?

A. Yakovlev was about 23 or 30 years of age at the time

I knew him. He was about 5 feet 9 inches in height; had a medium build, which tended toward the slender. He had [fol. 1171] dark or dark brown hair and there was a lock of it that kept falling over his forehead, which he would brush back continually. He had a rather long nose and a fair complexion, dark eyes. He walked with somewhat of a stoop.

Q. Now, you say you had a conversation with him at this meeting which was, I believe, in March of 1944, and that took place *of* Child's Restaurant on Eighth Avenue?

A. Yes.

Q. Now, as a result of that conversation what did you do?

A. As a result of that conversation I continued my espionage work for the Soviet Union, with Yakovlev as my new Soviet superior.

Mr. E. H. Bloch: Now, if the Court please, I am rising to renew my objection to the use of these charmed words, or words of art, as it were, "Soviet espionage".

The Court: Don't characterize it.

Mr. E. H. Bloch: I am sorry.

The Court: "Those charmed words".

Mr. E. H. Bloch: I am sorry, the specific words, the specific words used in the context in which this witness is using them.

The Court: Your objection is overruled.

Mr. E. H. Bloch. Yes. As I said before, your Honor, I [fol. 1172] don't want to get up every time he uses these words to state my objection for the record.

The Court: All right. You see, you are going to destroy all the good you want to do by making a long speech with these objections.

Mr. E. H. Bloch: All right, I am sorry.

Q. Now, did you meet Klaus Fuchs, Dr. Klaus Fuchs, sime time in the middle of June 1944?

A. Yes, I did.

Q. Where did you meet Fuchs?

A. I met Fuchs in Woodside, Queens.

Q. Did you have a conversation with Fuchs at this time?

A. Yes, I did.

Q. As a result of that conversation what did you do?

Mr. E. H. Bloch: If the Court please, I submit that there is still no connection that I have heard of between Dr. Fuchs and any of the defendants, including the defendant Yakovlev.

Mr. Lane: Well, I offer it subject to connection, your Honor.

Mr. E. H. Bloch: Oh, I see. May I note my objection?

The Court: You have noted it. It is being taken subject to connection.

[fol. 1173] The Witness: Shall I answer?

Mr. Lane: May we have the answer?

The Court: Yes.

A. As a result of my meeting with Dr. Fuchs in Woodside, in the middle of June, I wrote a report, which I turned over to Yakovlev.

Q. Where did you turn this report over to Yakovlev? And when?

A. This report was turned over to Yakovlev about a week or so after my meeting with Dr. Fuchs. The place was somewhere in New York.

Q. That was in June of 1944; is that correct?

A. That is correct; the middle of June.

Q. Did you have a conversation with Yakovlev at this time?

A. Yes, I did.

Q. Will you tell the jury what that conversation was, as best you can recall?

A. I told Yakovlev—I told Yakolev that the next time I met Fuchs, Fuchs was going to give me information. This information was to relate to the application of nuclear fission to the production of a military weapon. I gave Yakovlev the exact place where this meeting was scheduled.

Q. Was that the complete conversation? Did you tell him anything else, that you can recall?

A. That was the complete conversation that I can recall.

[fol. 1173a] Q. Now, did you have a meeting with Fuchs after that, in July 1944, at 96th Street and Central Park?

A. I had a meeting with Fuchs in June of '44, late in June of '44.

[fol. 1174] Q. And where was this meeting?

A. The meeting with Fuchs occurred in the area of Borough Hall in Brooklyn.

Q. Did you have a conversation with Fuchs at that time?

A. We had no conversation at all.

Q. Well, what was the result of that meeting with Fuchs? What did you do as the result of that meeting with Fuchs?

—. As a consequence of the meeting I had with Dr. Fuchs at Borough Hall I turned over to Yakovlev some few minutes after my meeting with Fuchs and still in the area of Borough Hall, I turned over to Yakovlev a package of papers.

Q. Now, did you have another meeting with Fuchs in July of 1944?

A. I had a meeting with Dr. Fuchs in the middle of July 1944.

Q. Now, where did this meeting take place and approximately what time of the day or night?

A. This meeting took place at 96th Street, about 96th Street and Central Park West. The time was the early evening.

Q. And how long approximately did this meeting last?

A. The meeting lasted about an hour and a half.

Q. And did you have a conversation with him during that time?

A. Yes, I had a conversation with Dr. Fuchs.

Q. And as the result of that conversation what did you [fol. 1175] do?

—. As the result of the conversation I had with Dr. Fuchs I turned over to Yakovlev a report which I had written.

Q. Now, when did you turn over that report to Yakovlev and where?

A. The report to Yakovlev was turned over in New York City and occurred about a week or so after my meeting with Dr. Fuchs.

Q. Now, what did this report contain that you turned over to Yakovlev, do you know?

A. Yes, I do.

Q. What did it contain?

Mr. A. Bloch: I object to it upon the ground that it is incompetent, irrelevant and immaterial and hearsay against these defendants and not the best evidence.

The Court: What about that?

Mr. Lane: Well, your Honor, Yakovlev is one of the co-defendants in the case.

The Court: Yes.

Mr. Lane: The witness here is a co-conspirator.

The Court: Yes.

Mr. Lane: The witness read the report. He knew the contents of the report and he turned it over to Yakovlev, but I will withdraw the question, your Honor, and I will ask the witness if he had a conversation with Yakovlev on this particular occasion.

The Witness: Yes, I did.

[fol. 1176] Q. And what was the conversation?

A. The conversation had to do with the fact that Fuchs had given me further information on the progress of the working going on in New York by a joint American and British project, which project was aimed at producing an atomic bomb. The work was going on somewhere in the area of Church Street, New York.

The Court: This is in July of 1944?

The Witness: Yes. It is the middle of July 1944.

Q. Now, during this period when you were meeting Dr. Fuchs were you also meeting Yakovlev at regular intervals?

A. During this period I had a regularly scheduled series of meetings with Yakovlev. Yakovlev continually advised and instructed me and we talked over together as to how I should continue my work with Dr. Fuchs.

Q. Now, did you have any particular modus operandi in your connections, in your work with Yakovlev?

A. Yes, I did.

Q. Would you tell the jury, would you relate the details of that?

Mr. E. H. Bloch: Do I understand that this is pursuant to the directions——

Mr. Lane: Pursuant to a conversation I believe with [fol. 1177] Yakovlev.

A. I worked in the following manner with Yakovlev: My duties were to obtain information from a number of sources in America and to transfer this information to

Yakovlev. The meetings with the sources of information in America were effected in two ways: First, it could be personal introduction; secondly, there was an introduction which was effected only between the American contact and myself and was effected by means of a set of recognition signals. Now these signals included at least two features: One of them was that there was always an object or a piece of paper involved, on one part or the other or possibly on both parts; that is the other person in America and myself. In addition there was a code phrase used and this phrase was usually used in the form of a greeting. In all cases when I introduced myself I used a false name and in all cases I never indicated my true place of residence.

Now, once the introduction had been effected I proceeded to work; I conducted myself in the following manner: I give the source of information in America whoever that person was who was going to furnish me the information—I give him a list of the data or material which was desired; secondly, in case there had been a Soviet agent who had preceded me, I would take steps so that the source of informa-[fol. 1178] tion, that the person with whom I was working would first clean up all of the back work. Then thirdly, we would arrange for a series of meetings. These were very precise arrangements.

All of these people from whom I obtained information were not residents of Philadelphia. I had to go some distance usually to meet them. I would arrange for a meeting in the town where they lived or in some other town and the meeting would be for an exact time at an exact place and there would be an exact schedule for what was to be done during the meeting. In other words, if we were just going to discuss the possibility of obtaining certain types of information, the hazards involved, just how much information should be obtained, and just what source was needed, then a rather long meeting was scheduled. If I was going to actually get information, very usually a brief meeting was scheduled, the idea being to minimize the time of detection when information would be passed from the American to me. In addition to this I made payments of sums of money to some of the people whom I regularly contacted and always I wrote reports detailing ever-thing that happened

at every meeting with these people and these reports I turned over to Yakovlev.

[fol. 1179] By the Court:

Q. And where would you get the money from that you paid to some of these people for the information?

A. The money was given to me by Yakovlev.

(Paper marked Government's Exhibit 12 for identification.)

By Mr. Lane:

Q. Now I show you Government's Exhibit 12 for identification and I ask you if you can identify the person in that picture?

A. This is Dr. Klaus Fuchs.

Mr. Lane: I offer it in evidence (handing to counsel).

(Marked Government's Exhibit 12.)

The Court: Shall we suspend at this time, Mr. Lane?

Mr. Lane: I would like to, your Honor.

The Court: All right. You can take the exhibit back and show it to the jury again, Mr. Lane, upon resumption.

We will recess until 2.20.

(Recess to 2.20 P.M.)

[fol. 1180] Afternoon Session

(The following took place at the bench:)

The Court: Did you want to put something on the record?

Mr. Kuntz: I suppose you saw the newspapers. It is an unfortunate experience. We were wondering what effect it might have. I didn't know it until I got in the courtroom and Mannie Bloch showed it to me. It had a front page——

The Court: Well, this is off the record.

(Discussion off the record at the bench.)

(The following took place in open court:)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 112

MORTON SOBELL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

PETITIONS FOR WRITS OF CERTIORARI AND EXHIBIT THERETO

VOL. II

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 19, 1952.

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HARRY GOLD resumed the stand:

Direct Examination continued.

By Mr. Lane:

Q. Now Mr. Gold, at the conclusion of this morning's session I believe you were giving an account of a conversation with Yakovlev in which you were reciting the details of the modus operandi. Now did you complete your conversation with reference to that particular item?

A. No, I had not.

Q. Will you continue, please?

A. In addition to the details of my operations, of my conduct with the source of information in America, I had a very set pattern which I used in connection with my dealings with Yakovlev. This is how it worked: We had an [fol. 1181] arrangement not only for regular meetings but we had an arrangement for alternate meetings, should one of the regular ones not take place, and then in addition to that we had an arrangement for an emergency meeting. This emergency meeting was a one-way affair. A system was set up whereby Yakovlev could get in touch with me if he wanted me quickly, but I couldn't get in touch with him because I didn't know where. Yakovlev told me that in this way the chain was cut in two places. The person from whom I got the information in America did not know me by my true name, nor did he know where I lived, nor could he get in touch with me and I couldn't get in touch with Yakovlev. Yakovlev said this was a good thing.

In addition, Yakovlev and I had a very exact method when we were going to transfer information. It might be that something would have to be copied and then returned. In that case we had to have a set procedure. On certain occasions we had a definite means by which we transferred information. Such means would include a set-up whereby I would take the information and put it between the folds of a newspaper and Yakovlev and I would exchange the newspapers. The one that I got was just a newspaper. The one that he got had the information between the folds, the information usually being in some sort of an enclosure. In [fol. 1182] addition to this, of course, we had regular con-

ferences all along at which we discussed my conduct with the people in America who were furnishing me with information, and the final point was that we had a system set up whereby we could act or react very promptly in case there was any sign of surveillance, and this system provided for not only surveillance should I notice any before I came to see Yakovlev, but surveillance if we should suspect any while we were actually having a meeting, and also if there should be any suspicious actions around either of us after we had parted, *around either of us after we had parted.*

Q. Now, does that exhaust your recollection of that conversation?

A. That is about all that I can recall about that conversation, Mr. Lane.

[fol. 1183] Q. Now, did you have a meeting with Dr. Fuchs in Cambridge, Massachusetts, early in January of 1945?

Mr. E. H. Bloch: If the Court please, do I assume that this question presupposes that this is part of the conspiracy charged in this indictment?

Mr. Lane: Yes, your Honor.

A. Yes, I did.

Q. Did you have a conversation with Dr. Fuchs at that time?

A. Yes, I did.

Q. As a result of that conversation, what did you do?

A. In consequence of the conversation that I had with Dr. Fuchs, I did two things. On the same day that I saw Dr. Fuchs, the same morning that I saw Dr. Fuchs in Cambridge, Massachusetts, I returned from Cambridge to New York City and turned over to Yakovlev a package of papers which Fuchs had given me. About a week later, I wrote a report which I turned over to Yakovlev.

Q. When did you turn this report over to Yakovlev?

A. The report was turned over to Yakovlev somewhere around the second week in January.

Q. Whereabouts did you turn this report over to Yakovlev?

A. It was turned over to Yakovlev somewhere in downtown.

Mr. E. H. Bloch: Pardon me. Is that January [fol. 1184] 1945?

Mr. Lane: That is correct.

The Witness: January of '45.

Q. At that time did you have a conversation with Yakovlev?

A. Yes, I did.

Q. What was the conversation?

A. I told Yakovlev that I had received the following information from Fuchs: First, that Fuchs was now stationed at a place called Los Alamos, New Mexico; that this was a large experimental station. It had formerly been a boy's school, a select boys' school. Fuchs told me that a tremendous amount of progress had been made. In addition, he had made mention of a lens, which was being worked on as a part of the atom bomb. Finally, we had set a date, this date to be the first Saturday in June of 1945, and at this date I was to meet Fuchs in Santa Fe, New Mexico.

Q. Did you have a further meeting with Fuchs within the next month or so?

A. Not within the next month or so.

Q. Did you have a meeting with Yakovlev in May of 1945?

A. I had a meeting with Yakovlev in February, early in February of 1945.

Q. Where did this meeting take place?

A. This meeting took place about 23rd Street and Ninth or Tenth Avenue.

[fol. 1184a] Q. Did you have this conversation with him at that time?

A. Yes, I did.

Q. What was the conversation?

A. At this meeting Yakovlev told me to try to remember anything else that Fuchs had mentioned during our Cambridge meeting, about the lens. Yakovlev was very agitated and asked me to scour my memory clean so as to elicit any possible scrap of information about this lens. I recall the meeting very well, because I was frightened, it was a bad neighborhood to be in.

Mr. E. H. Bloch: I move to strike that out.

The Witness: I am sorry.

The Court: All right, strike it out.

Mr. Saypol: What is the objection? Is it the fact that he was frightened, if the Court please?

The Court: I am striking out being frightened.

Mr. Saypol: Otherwise I take it the witness may continue?

The Court: That is right.

Q. Does that exhaust your recollection of the conversation at that particular meeting?

A. Yes, it does.

By the Court:

Q. Well, did you give him anything else?

A. What is it?

[fol. 1185] Q. You say he asked you to search your memory, give him every scrap of information you had. Now, did you give him anything else at that meeting?

A. I didn't give him anything else, that I can recall, at that meeting.

The Court: Very well.

A. (Continuing:) I think I put everything down in the report which I gave about the second week in January.

The Court: All right.

By Mr. Lane:

Q. Now in May of 1945, did you have a meeting with Yakovlev?

A. Yes, I did.

Q. Will you try to fix the date as best you can of that particular meeting? The exact date of the meeting that I had with Yakovlev in May of 1945 was on the last Saturday in May, and about—pretty late in the afternoon, around four in the afternoon, I would say.

Q. Where did this meeting take place?

A. The meeting with Yakovlev on the last Saturday in May took place inside of a combination restaurant and bar, called Volks—V-o-l-k—V-o-l-k-s, I think it is, k's or possibly V-o-l-e-k-s. In any case, it is at the southwest corner of 42nd Street and Third Avenue, in Manhattan.

Q. Now, will you tell the jury what happened on this [fol. 1186] occasion?

A. I stood at the bar with Yakovlev and we had a drink. I told Yakovlev that I wanted to take a walk with him, to dispose of the two matters which were the purpose of our meeting. These matters were, one, first, that Yakovlev would be able to ascertain definitely that I was going to see Fuchs on the first Saturday in June of 1945. I was having difficulty at this time getting off from work and he wanted to make sure that I was going. The second point of our meeting was that we had to arrange for two meetings when I returned from Santa Fe, one meeting at which I would transfer information which I was supposed to receive from Fuchs; then there would be a second meeting some time later, at which I would give Yakovlev a detailed report, as well as a verbal account of exactly what would have transpired at this meeting with Fuchs.

Now, Yakovlev told me that he — some matter to discuss with me at length and he said that we should sit in the rear of Volks' cafe, where there was a circular place with some tables in it, fairly secluded. We did so. We sat down there and the waiter brought us a drink. Yakovlev told me that he wanted me to take on an additional mission besides the one to see Dr. Fuchs. He said that he wanted me to go to Albuquerque, New Mexico. I protested——

Mr. E. H. Bloch: I move to strike that out, your [fol. 1187] Honor.

The Court: All right, strike out "protested".

The Witness: Sorry, your Honor.

The Court: Tell us what you told him.

A. (Continuing:) I told Yakovlev that I did not wish to take on this additional task. Yakovlev told me that the matter was very vital and that I had to do it. He said that a woman was supposed to go in place of me but that she was unable to make the trip. He said therefore, he said that I had to go. I told Yakovlev that it was highly inadvisable to endanger the very important trip to see Dr. Fuchs with this additional task. Yakovlev told me that I didn't understand that this was an extremely important business, that I just had to go to Albuquerque, in addition to going to Santa

Fe, and he said, "That is an order"; and that was all. I agreed to go.

Yakovlev then gave me a sheet of paper; it was onionskin paper, and on it was typed the following: First, the name "Greenglass", just "Greenglass". Then a number "High Street"; all that I can recall about the number is that the last figure—it was a low number and the last figure, the second figure was "0" and the last figure was either 5, 7 or 9; and then underneath that was "Albuquerque, New Mexico". [fol. 1188] The last thing that was on the paper was "Recognition signal. I come from Julius". In addition to this, Yakovlev gave me a piece of cardboard, which appeared to have been cut from a packaged food of some sort. It was cut in an odd shape and Yakovlev told me that the man Greenglass, whom I would meet in Albuquerque, would have the matching piece of cardboard. Yakovlev told me that just in case the man Greenglass should not be present when I called in Albuquerque, that his wife would have the information and that she would turn it over to me. Yakovlev gave me an envelope which he said contained $500., and he told me to give it to Greenglass. Yakovlev told me that I should follow a very devious route on my way to Santa Fe and to Albuquerque. He said that I should first go to Phoenix, Arizona; then to El Paso, and from there to Santa Fe. Yakovlev said that I should do this to minimize any danger of being followed.

The last thing that took place on this last Saturday in May was that Yakovlev and I arranged for two meetings upon my return from the Southwest.

[fol. 1189] Q. Were you to go to Santa Fe before Albuquerque?

A. Yakovlev told me that I was to go to Santa Fe first.

Q. Was there any route to be followed from Santa Fe to Albuquerque?

A. He didn't specify, your Honor. There is only one way that I know of to get from there. They are 60 miles apart and there is a bus runs between them.

The Court: All right.

By Mr. Lane:

Q. Do you have the paper on which those instructions were written?

A. I don't have the paper. When Yakovlev gave me the paper——

Mr. E. H. Bloch: I move to strike out everything else, your Honor.

The Court: All right, strike it out.

Q. What happened to that paper, if you know?

A. I was to destroy the paper.

Q. Did you destroy it?

A. I don't know what happened to it. I just remember the emphasis on memorizing what is in it and destroy it.

Q. Now, will you describe that cardboard you received from Yakovlev on that occasion?

A. Yes. It was about, just about an inch in height, possibly two inches—yes, possibly two inches in length and was shaped this way (indicating). It was rectangular and [fol. 1190] it was shaped like this (indicating). I can draw it.

Q. Well, I show you Government's Exhibits 4-A and 4-B in evidence and ask you if one of those represents the cardboard you received from Yakovlev.

A. This piece here where I have my finger.

Mr. Lane: May the record indicate that the witness is pointing at Government's Exhibit 4-B in evidence.

Q. Now, did you go to Santa Fe in June of 1945?

A. Yes, I did.

Q. When did you arrive in Santa Fe?

A. I arrived in Santa Fe on Saturday the 2nd of June 1945.

Q. And did you meet Dr. Fuchs?

A. Yes, I did.

The Court: What was that date again that you gave?

The Witness: The 2nd of June 1945, a Saturday.

Q. Did you have a conversation with Dr. Fuchs?

A. Yes, I did.

Q. And how long did that conversation last?

A. My conversation with Dr. Fuchs in Santa Fe lasted about 20 minutes to a half hour.

Q. And as a result of that conversation what did you do?

A. As the result of that conversation I did two things: Upon my return to New York I turned over to Yakovlev a bunch of papers which Dr. Fuchs had given me in Santa [fol. 1191] Fe. About two weeks after that——

Q. No. I neglected to ask you how long this conversation took place in Volk's Cafe with Yakovlev? How long did it last?

A. The conversation with Yakovlev in Volk's Cafe took about an hour; three-quarters of an hour to an hour. It is hard to place it just exactly.

Q. Now, when did you depart from Santa Fe?

A. I left Santa Fe in the very late afternoon.

Q. Where did you go?

A. The 2nd of June.

Q. Where did you go?

A. I went by bus from Santa Fe to Albuquerque.

Q. What did you do after you arrived in Albuquerque?

A. I arrived in Albuquerque early in the evening of the 2nd of June, and about 8.30 that night went—about 8.00 or 8.30, yes, I went to the designated address on High Street. There I was met by a tall elderly white-haired and somewhat stooped man. I inquired about the Greenglasses and he told me that they were out for the evening but he thought they would be in early on Sunday morning.

Q. Then what did you do?

A. Then I returned to downtown Albuquerque.

Q. Did you register in any hotel when you were in Albuquerque on this occasion?

[fol. 1192] A. I stayed that night—I finally managed to obtain a room in a hallway of a rooming house and then on Sunday morning I registered at the Hotel Hilton.

Q. Now, did you register under your own name?

A. Yes, I did.

Q. What name did you use?

A. Harry Gold.

Q. Now, what did you do on Sunday? That is June 3, 1945?

A. On Sunday about 8.30 I went again to the High Street address. I was admitted, and I recall going up a very steep flight of steps, and I knocked on a door. It was open- by a young man of about 23 with dark hair. He was smiling. I said, "Mr. Greenglass"? He answered in the affirmative. I said, "I came from Julius", and I showed him the piece of cardboard in my hand, the piece of cardboard that had been given me by Yakovlev in Volks' Cafe. He asked me to enter. I did. Greenglass went to a women's handbag and brought out from it a piece of a cardboard. We matched the two of them.

Q. Will you describe that cardboard which Greenglass showed you?

A. It appeared to be from the same, part of the same packaged food from which the piece of cardboard that I had had originally been cut.

By the Court:

Q. When you say Greenglass matched the two, just what [fol. 1193] did he do?

A. He showed it to me and we put them together, as nearly as I can remember.

Q. How did you put them together? To see whether the ends met, is that what you did?

A. No. Just roughly. I mean you could see at a glance that they were the same thing.

By Mr. Lane:

Q. Now I show you Government's Exhibit 4-A in evidence and I ask you if it resembles the piece of cardboard which Greenglass showed to you?

A. This resembles it, the one that I had my finger on, 4-A, yes.

Mr. Lane: May the record indicate that the witness has identified Government's Exhibit 4-A as the cardboard replica of the piece that was shown to him by David Greenglass.

Q. And the two pieces matched, you say?

A. The two pieces matched.

Q. Now, will you continue the conversation which you had at that time?

(Marked Government's Exhibit 13 for identification.)

A. At this point after we had matched the two pieces of cardboard I introduced myself to Greenglass as Dave from Pittsburgh; that was all. Greenglass introduced me to the young woman who was there and said she was his wife Ruth. Mrs. Greenglass said that it was coincidence that my first [fol. 1194] name and the first name of her husband were the same.

Greenglass then told me that my visit to him on this exact day was a bit of a surprise; he had not expected me right on that day, but that nevertheless he would have the material on the atom bomb ready for me that afternoon.

At this point Mrs. Greenglass went into the kitchen to prepare some food. Then I gave Mr. Greenglass the envelope which Yakovlev had given me in Volks' Cafe. This envelope was the one that contained $500. Greenglass took the envelope from me. Greenglass told me that he would have the information ready at about 4 o'clock, 3.00 or 4 o'clock in the afternoon; the exact time I can't recall except that we set it.

At this point Greenglass told me that there were a number of people at Los Alamos that he thought would make very likely recruits; that is, they were also people who might be willing to furnish information on the atom bomb to the Soviet Union, and he started to give me the names of these people, the names of some of these people. I cut him very short indeed. I told him that such procedure was extremely hazardous, foolhardy, that under no circumstances should he ever try to proposition anyone on his own into trying to get information for the Soviet Union. [fol. 1195] I told him to be very circumspect in his conduct and to never even drop the slightest hint to anyone that he himself was furnishing information on the atom bomb to the Soviet Union.

The last thing that took place that morning was that just as I was preparing to go, Mrs. Greenglass told me that just before she had left New York City to come to Albuquerque she had spoken with Julius. This meeting that we had in

the morning on the 3rd of June 1945, this Sunday morning, took about 15 minutes.

Q. Now I show you Government's Exhibit 13 for identification and I ask you if you can identify the people in that picture.

A. Yes. The man with his arm around the woman is David Greenglass. The woman is Mrs. Ruth Greenglass.

Mr. Lane: I offer Government's Exhibit 13 for identification in evidence.

Mr. E. H. Bloch: No objection.

(Marked Government's Exhibit 13.)

Q. Did you return to the home of the Greenglasses on the same day, Sunday, June 3, 1945?

A. Yes, I did.

Q. And what time did you return?

A. It was about between 3.00 and 3 o'clock.

Q. And who was present when you returned?

A. Mr. Greenglass was there and his wife Ruth was [fol. 1196] there.

Q. And did you have a conversation at that time?

A. Yes, I did.

Q. Will you tell the jury what that conversation was?

A. Mr. Greenglass gave me an envelope which he said contained the information for which I had come, the information on the atom bomb. I took the envelope. Mr. Greenglass told me that he expected to get a furlough sometime around Christmas, and that he would return to New York at that time. He told me that if I wished to get in touch with him then I could do so by calling his brother-in-law Julius, and he gave me the telephone number of Julius in New York City.

Q. Do you recall now what that number was?

A. I cannot.

Q. Was that all that was said at that time?

A. I told Greenglass that very likely I might be returning to Albuquerque in the early fall of 1945 and if I did so there was a possibility that I might stop in and see him.

Q. And did you receive some information at that time, some papers from Greenglass?

The Court: At what time?

A. I have already related——

Mr. Lane: That Sunday afternoon.

[fol. 1196a] A. I have already related that he gave me an envelope which contained, which he said contained information on the atom bomb.

[fol. 1197] Q. But did you examine it at that time?

A. I did not examine it at that time, no. I just took the envelope and put it in my pocket.

Q. How long a period of time did this meeting consume?

The Court: How large an envelope was that?

The Witness: I would say it was a large letter size, pretty large letter size, as I recall it.

Q. How much time was consumed in this particular meeting?

A. The meeting took only about five minutes, possibly ten at the very most.

Q. And then what did you do?

A. The three of us, Mr. Greenglass, Mrs. Greenglass and myself, left the Greenglass's apartment and we walked along a slanting back street in Albuquerque, and there in front of a small building I left the Greenglasses.

Q. And did you return to New York?

A. Yes, I did.

Q. Immediately?

A. Yes, I did.

Q. En route to New York did you at any time inspect the material which you had received from Greenglass?

A. Yes, I did, on the train from Albuquerque to Chicago and somewhere in Kansas, I believe. I examined the material which Greenglass had given me. I just examined it very quickly. My sole purpose was to get it——

[fol. 1198] Mr. E. H. Bloch: I object to what his purpose was.

The Court: All right.

The Witness: I put it into an envelope, into a manila envelope, one of the kind with a brass clasp, and in another manila envelope I put the papers which Dr. Fuchs had

given me. I labeled the two envelopes. On the one from Fuchs I wrote "Doctor". On the one from Greenglass I wrote "Other," o-t-h-e-r.

Q. Well, now, can you describe a little better what was in the Greenglass package?

A. Yes. The material given me by Greenglass consisted of three or four handwritten pages plus a couple of sketches. The sketches had letters on them which were referred to in the text of the three or four handwritten pages. The sketches appeared to be for a device of some kind.

Q. When did you arrive back in New York?

A. I arrived in New York on the 5th of June.

By the Court:

Q. Did you read the descriptive matter that was contained on these other sheets of paper?

A. No, I did not, your Honor. I just—it happened to hit my eye and I leafed through them, is what I recall.

By Mr. Lane:

Q. Now the question was, when did you arrive back in New York?

A. I arrived in New York on the 5th of June, 1945, in the [fol. 1199] evening.

Q. And did you meet Yakovlev?

A. Yes, I did.

Q. On the same day?

A. On the same evening.

Q. Where did you meet him?

A. I met Yakovlev along Metropolitan Avenue, in Brooklyn, and somewhere, where Metropolitan Avenue runs into Queens. It was a very lonely place, particularly at the time of night when I met Yakovlev.

The Court: What time was it?

The Witness: It was about 10 o'clock at night.

Q. Now did I understand you to say that this meeting was by prearrangement?

A. This meeting had been arranged at Volks' Cafe on the last Saturday in May of 1945.

The Court: Excuse me. You say there was an alternative meeting arranged also, in the event you didn't meet that evening?

The Witness: No, your Honor, there was an alternative meeting but its primary purpose was to hand over a written report on what had transpired during my trip to Santa Fe. If it should have happened that I ha*nd*'t been able to make the meeting with Yakovlev, then the alternative meeting would have had to serve a double purpose.

The Court: Very well.

Q. How long did this meeting last with Yakovlev?

[fol. 1200] A. The meeting with Yakovlev lasted about a minute, that was all.

Q. What did you do at that meeting?

A. We met and Yakovlev wanted to know if I had seen the both of them, said, "The doctor and the man". I said that I had. Yakovlev wanted to know had I got information from the both of them and I said that I had. Then I gave Yakovlev the two manila envelopes, the one labeled "Doctor", which had the information I had received from Fuchs in Santa Fe; the one labeled "Other", which had the information I had received from David Greenglass in Albuquerque, on the 3rd of June 1945.

Q. When was your next meeting with Yakovlev?

A. My next meeting with Yakovlev was about two weeks later, and——

Q. Where did this meeting take place?

A. This meeting took place at the end of the Flushing elevated line, at Main Street, in Flushing.

Q. What time was it?

A. The time was in the middle of the evening.

Q. Did you have a conversation with Yakovlev?

The Court: Excuse me. When did you say that was?

The Witness: In the middle of the evening.

The Court: What date did you say that was?

[fol. 1201] The Witness: It was about two weeks after the 5th of June. We are still in June.

Q. Did you have a conversation with Yakovlev at that time?

A. Yes, I did.

Q. Will you tell the jury what that conversation was?

A. I told Yakovlev—Yakovlev told me that the information which I had given him some two weeks previous had been sent immediately to the Soviet Union. He said that the information which I had received from Greenglass was extremely excellent and very valuable. Then Yakovlev listened while I recounted the details of my two meetings, the one with Fuchs in Santa Fe, the one with Greenglass in Albuquerque. I told Yakovlev that Fuchs had related that tremendous progress had been made on the construction of the atom bomb and Fuchs had said that the first trial of an atomic explosion was due to take place in July, in New Mexico. Fuchs and I—I told Yakovlev that Fuchs and I had agreed upon a meeting between the two of us in Santa Fe for September of 1945.

Q. Approximately how long did this conversation last, with Yakovlev?

A. This conversation lasted about two and a half hours. I gave every detail at that time of my two meetings with these people who furnished me with information in the Southwest.

[fol. 1202] Q. Did you have a meeting with Yakovlev early in July of 1945?

A. Yes, I did.

Q. Where did this meeting take place?

A. The meeting with Yakovlev early in July of 1945 took place inside of a combination seafood and bar, which is at the Broadway stop of the Astoria elevated line.

Q. Did you have a conversation?

A. Yes, I did.

Q. What was this conversation?

A. Yakovlev told me that it was necessary that we have an arrangement whereby some Soviet agent other than himself could get in touch with me. At Yakovlev's instructions, I took from my pocket a piece of paper. This piece of paper was a memorandum sheet, something like an invoice, from the Arthur H. Thomas Company, of Philadelphia, a laboratory supply house, and I tore off the top part of this memorandum sheet, and on the reverse side, at Yakovlev's instructions, I wrote the following words, and I wrote it across as a diagonal of a parallelogram. I wrote, "Directions to Paul Street" and the "Street" is spelled out,

S-t-r-e-e-t. Then Yakovlev took this piece of paper and he tore it in an irregular fashion, so that the tear came between the P and the a of the Paul. Yakovlev retained the part of the paper which said "Directions to P" and I was given by Yakovlev the piece of paper which had on it, "aul Street." Yakovlev told me that should I ever receive two [fol. 1203] tickets in an envelope, in the mail, with no other enclosure inside that envelope, that I should take this to be a signal, that a definite number of days after the date that was printed on the tickets—the tickets themselves were to be tickets to either a sporting event or a theatrical attraction in New York City; it would have a date on them—now, a certain number of days after that date on the tickets, I was to go to the Astoria—to the Broadway stop of the Astoria elevated line, but before I went there I was to scout the place very carefully for about an hour, to make sure that there were no signs of surveillance. Then when I was inside, I was to take a seat at a table in this combination restaurant and bar. My replacement Soviet contact was to stand at the bar where he could observe me, to again watch for any symptom of anything suspicious. Then he would approach me, the new Soviet contact, and he would say, "Can you direct me to Paul Street"? I was seated at the table. I would answer, "Yes, I am going there myself. Come along." First, however, he would show me the piece of paper, that is the first thing he would do, he would show me the piece of paper, and then I would produce the matching half. Then would come the recognition signal or the [fol. 1204] recognition phrases having to do with the directions to Paul Street.

(Marked Government's Exhibit 14 for identification.)

Q. I show you Government's Exhibit 14 for identification, and I ask you if this is a replica of the sheet of paper which you had on that particular occasion of your conversation with Yakovlev (handing)?

Mr. E. H. Bloch: May I ask Mr. Lane to explain what he means by "replica"?

The Court: Yes.

Mr. Lane: Yell, it is a duplicate, I believe, Mr. Bloch, of

the same sheet of paper that he had on that occasion, took out of his pocket.

Mr. E. H. Bloch: Does this purport to be the original?

Mr. Lane: No, it does not.

Mr. E. H. Bloch: Oh, I see.

A. This sheet of paper is of the type used by the Arthur H. Thomas Company when someone went there to pick up a package. That was how I had got the original sheet and happened to have it in my pocket.

Q. Is that a duplicate of the sheet you had on that particular occasion?

A. This appears to be a duplicate, Mr. Lane. I just want to see one thing—yes, I was looking at the reverse side to [fol. 1205] see if there was any printing on there. There isn't.

Mr. E. H. Bloch: Mr. Lane, I wonder whether you can let me look at it, so that I don't get confused.

Mr. Lane: Yes (handing).

Q. Now, will you write on this Government's Exhibit 14 for identification the wording that was on that paper, as best you can recall it, and then tear it in the way that you recall it was torn on that particular evening? (Handed to witness.)

A. The wording will have to be written on the reverse side, because that is the way that it was done. It was on the reverse side, not the side where the printing is, but on the back.

Q. Well, you do it as best you recall it.

A. (Witness writes on Government's Exhibit 14 for identification.)

Q. Have you got the writing on there, Mr. Gold?

A. I have got the writing there.

Q. Now, will you tear it in the way you recall it was torn at that time?

A. There is one difficulty, which was unavoidable here. The actual piece of paper was larger in this direction (indicating), but in order not to touch the imprint here, "Government's exhibit," I had to crowd the words towards the

top a little bit, so that it is actually just a little smaller [fol. 1206] in this direction (indicating).

Mr. Lane: On the lefthand side. May the record indicate that the witness is pointing to the lefthand side of the exhibit?

Q. Go ahead, rip it, tear it the way it was torn.

A. Well, I will have to tear across this notation.

Q. Go ahead, tear across it.

A. (Witness tears as requested) Just about like this. Now, this would have to go down a little further. Shall I do it?

Q. You do it.

A. (Witness tears further).

Q. Now, is that a reasonable facsimile of the way the paper was torn before?

A. Yes, it is.

Mr. Lane: I would like to have that marked as Government's Exhibits 14-A and B.

(Marked Government's Exhibits 14-A and 14-B.)

Mr. Lane: Now I offer Government's exhibits 14-A and 14-B for identification in evidence.

The Court: No objection.

(Government's Exhibits 14-A and 14-B for identification marked in evidence.)

Mr. Lane: Would this be a good place to recess, your Honor?

The Court: We will take a recess at this time.

(Short recess.)

[fol. 1207] Mr. Lane: If your Honor please, at the beginning of the noon recess I think you had granted permission for me to show the jury Government's Exhibit 12.

The Court: Yes.

Mr. Lane: May I do so now?

The Court: Yes.

Mr. Saypol: That is the photograph of Klaus Fuchs.

The Court: Yes.

(Mr. Lane hands Government's Exhibit 12 to the jury.)

By Mr. Lane:

Q. Mr. Gold, did you have a meeting with Yakovlev in the middle of August 1945?

A. Yes, I did.

Q. Where did this meeting take place?

A. This meeting took place in Brooklyn.

Q. And did you have a conversation at that time?

A. Yes, I did.

Q. Will you tell the jury what the conversation was?

The Court: Let me get this. When was this?

Mr. Lane: August of 1945, your Honor.

The Court: All right, proceed.

A. The conversation concerned the fact that I was to take, soon to take a trip in September to Santa Fe to meet [fol. 1208] Dr. Fuchs. I told Yakovlev that since I was going to see Dr. Fuchs I might as well go to Albuquerque and see the Greenglasses. At this time Yakovlev told me that it would be inadvisable to endanger the trip to see Fuchs by complicating it with a visit to the Greenglasses in Albuquerque.

Q. Now, was that the sum and substance of that conversation?

A. That is the sum and substance of the conversation.

Q. Now, did you have a meeting with Dr. Fuchs in September 1945?

A. Yes, I did.

Q. When and where did this meeting take place?

A. The meeting took place in Santa Fe, New Mexico, on the 19th of September 1945. The exact place was on the outskirts of Santa Fe along a road leading out of Santa Fe near a large church.

Q. As the result of this conversation what did you do?

A. As the result of the meeting—of the conversation I had with Dr. Fuchs I returned to New York City and I did two things: I returned on the 22nd of September and I missed my meeting with Yakovlev. I got back just too late that evening to see Yakovlev. About 10 days later I met Yakovlev and this time—the original meeting on the 22nd was supposed to be a short one. This time I met him in Main Street in Flushing, in Main Street, Flushing and I

[fol. 1209] turned over to him a package of information which I had received from Fuchs.

Q. Now, at this time did you have a conversation with Yakovlev, in your September meeting with Yakovlev? Was it September or October?

A. This was about 10 days later I would say or two weeks —it was still September, as I recall. Yes, I did.

Q. What was the conversation?

A. The conversation covered the following matters which Fuchs told me: Fuchs had said first that there was no longer open and free and easy cooperation between the British and the Americans at Los Alamos and that many departments which had been formally readily accessible to him were now closed. He said as a result his superiors among the Britains had advised him that he would probably very soon have to return to England.

The second thing was that Fuchs told me that the first explosion at Alamogordo, New Mexico, in July had produced a tremendous feeling of awe among the scientists who had been producing it. He said in addition the attitude of the townspeople had changed quite a bit. Before that they had been regarded as a sort of boondoggling outfit and how they were raised to the level of heroes.

Fuchs told me, the third thing, that he had attended——

[fol. 1210] Mr. E. H. Bloch: If the Court please, may we approach the bench because it is in connection with a proposition of law on this Fuchs conversation. I would like to discuss it with the Court and Mr. Saypol.

The Court: Come up.

(The following proceedings took place at the bench, outside the hearing of the Jury.)

Mr. E. H. Bloch: The indictment here charges these various defendants and the two co-conspirators with conspiracy to commit espionage. Now in the indictment there is an allegation, and with others at present unknown to the grand jury. Now the thing that concerns me is this: At the time this indictment was returned Gold had already confessed and was already available to the prosecution. I don't know whether he testified before this particular grand jury or not. Now what I am concerned about is this: If Fuchs'

participation with Gold was already known in connection with this general conspiracy, then I can't quite gather why Fuchs was not made a co-conspirator. If, on the other hand, the intention was to have this conspiracy between Gold and Fuchs separate and apart from the consipracy charged here, then I would feel under duty to object to any conversation.

[fol. 1211] The Court: I think you misunderstand the theory on which they are putting it in. They are not putting it in to establish that a conspiracy existed between Gold and Fuchs, although one did exist, so much as to establish that a conspiracy did exist on Yakovlev's part with Gold.

Mr. E. H. Bloch: Yes, I understand that.

The Court: Isn't that it?

Mr. Lane: Yes.

Mr. E. H. Bloch: The thing that puzzles me, the materialty of competency of any conversation had between this witness——

Mr. Lane: We are not putting in any conversation yet.

The Court: They didn't put in a single conversation yet.

Mr. Saypol: Are you talking about Sobell?

Mr. E. H. Bloch: No, what he just testified to. He said that is what Yakovlev told him,——

Mr. Lane: We haven't put in a single conversation yet between Fuchs and anybody.

Mr. Saypol: No, we are not going beyond Fuchs. This is all conversation between co-conspirators. It is admissible under any one of several bases in addition to that.

[fol. 1212] Mr. E. H. Bloch: All right.

Mr. Saypol: We have religiously avoided that.

(The following proceedings were had in open court.)

Mr. E. H. Bloch: Just to clarify the record, it is understood that what the witness is now testifying about is a conversation which he had with one of the defendants?

The Court: Yakovlev.

Mr. E. H. Bloch: Yakovlev?

The Court: Yes.

The Witness: I reported to Yakovlev that Fuchs had told me about being present at the first atomic explosion at Alamogordo, New Mexico. Fuchs had said that the flash had been visible some 200 miles away. I told Yakovlev that

Fuchs was very worried about one matter: This concerned the fact that the British had gotten to Kiel, Germany, ahead of the Nazis—ahead of the Russians, and Fuchs was very worried, very much concerned over whether the British Intelligence might not discover the Gestapo dossier upon him. I told Yakovlev that Fuchs had said that he, Fuchs that is, had been the leader of the student group, the German student group at the University of Kiel and had fought the Nazis, Nazi storm troopers in the streets of Kiel. Fuchs [fol. 1213] had said that there was a very complete dossier by the Gestapo upon him and he was greatly troubled by the fact that should the British Intelligence come upon it they would become aware of his very strong Communist background and ties.

Mr. E. H. Bloch: If your Honor please, although as we as lawyers may understand it quite clearly, I would ask the Court to instruct the jury, to tell the jury at this point that Dr. Klaus Fuchs is not a defendant or a conspirator in this proceeding.

The Court: Dr. Klaus Fuchs is not a defendant in this case. This testimony is being admitted in connection with the general charge of conspiracy to commit espionage, in which Yakovlev is a defendant.

Mr. Saypol: Will the Court supplement that observation with the statement also that this witness is a co-conspirator?

The Court: Oh, yes. The witness Harry Gold is a co-conspirator.

The Witness: The final item I reported to Yakovlev were the details of an arrangement which Fuchs and I had arrived at, which arrangement concerned the means by which someone would get in touch with Fuchs when he returned to England. The exact details were there: Beginning on the first Saturday of every month after it has been determined [fol. 1214] that Fuchs had returned to England, at a stop in the British subway, underground in London called Paddington Crescent, possibly Teddington Crescent, 8 p.m., Fuchs was to be on the street at the underground stop, the street level. He was to be carrying five books bound with strings and supported by two fingers of one hand; he was to be carrying two books in another hand. His contact, whoever that would be, was to be carrying a copy of a Bennett Cerf book, "Stop me if you have heard this".

Q. Does that conclude your conversation with Yakovlev at that time?

A. That concludes my conversation with Yakovlev.

Q. When was your next meeting with Yakovlev?

A. Yakovlev and I had a regular series of meetings all throughout that fall of 1945.

Q. Do you recall a meeting in November of 1945?

A. Yes, I do.

Q. With Yakovlev?

A. Yes, I do.

Q. Where was this meeting held?

A. This meeting was held in New York City.

Q. And did you have a conversation with Yakovlev?

A. Yes, I did.

Q. Will you tell the jury what that conversation was?

A. I told Yakovlev that Greenglass had said at the time [fol. 1215] that I saw him in June of that year that Greenglass would be possibly coming home on a furlough about Christmas time. I told Yakovlev the time was drawing near to Christmas and that we ought to make some plan to get in touch with this brother-in-law, Julius, so that we could get further information from Greenglass. Yakovlev told me to mind my own business. He cut me very short.

Q. Now, in January 1946 did you have a conversation with Yakovlev?

A. Yes, I did.

Q. Where did this conversation take place?

A. This conversation took place in New York City.

Q. What was the conversation?

A. Yakovlev at this time told me that I should be very careful, much more careful than ever before. He related to me an incident which had taken place toward the end of 1945. He said that a very important person who had upon him information on the atom bomb had come to New York at the end of 1945 and that he, Yakovlev, had tried to get in touch with that person over a period of time, a period of a few days, but that the man had been trailed by Intelligence men continually, so that Yakovlev had to give up the idea of getting in touch with this source of information.

[fol. 1216] Yakovlev told me, he was telling me the story as an example of how to conduct myself. He said if it came

to a choice it was far better to pass up any chance of getting information than to do anything which would endanger the whole scheme.

Yakovlev said that he was very apprehensive.

By the Court:

Q. Did you know what Yakovlev was doing by way of employment aside from these activities?

A. I did not, your Honor. I had assumed——

Mr. E. H. Bloch: Wait, if the Court please. I object to what he might have assumed.

[fol. 1217] Q. Now was there anything else said on that occasion about any future meetings?

A. Yes. Yakovlev and I had arranged the following. We made a slight change in our method of meeting. Should a scheduled meeting not take place, then the next meeting which would take place would be at the same time as had originally—at the same place that had originally been planned, but the time was changed and the day of the week was changed, and should this alternate meeting not take place, then the emergency meeting would take place. But I was to use extreme caution about the emergency meeting. I was to go there well in advance, to scout it thoroughly, and to make certain that there was absolutely no surveillance going on.

Q. Now, did you have a meeting scheduled with Yakovlev for February of 1946?

A. Yes, I did.

Q. And where was this meeting scheduled to take place?

A. This meeting in February was scheduled to take place at the Earl Movie Theatre in the Bronx.

Q. Did you keep this appointment with Yakovlev?

A. Yes, I did.

Q. And what happened on that occasion?

A. Yakovlev didn't show up.

Q. When was the next time that you saw Yakovlev?

A. The next time that I saw Yakovlev was on the night [fol. 1218] of the 26th of December 1946.

Q. And you didn't see him in the interim between February and December of 1946?

A. For a period of about ten months I did not see Yakovlev.

Q. Now, will you tell the jury how you happened to meet Yakovlev in December of 1946?

A. Early in December of 1946 I received two tickets, two tickets to a boxing match in New York City. The tickets had arrived very late for me to keep the appointment. They had been addressed wrongly; they had been sent to 6328 Kindred Street instead of 6823 Kindred Street, so I wasn't able to keep the appointment.

Q. Kindred Street where?

A. In Philadelphia, my home in Philadelphia. At about five o'clock in the late afternoon of the 26th of December the phone rang at the laboratory where I was working in New York City, the laboratory of A. Brothman and Associates. I answered. A voice asked for Harry Gold. I said that I was Harry Gold. The voice said, "Have you been all right"?

Q. Did you recognize the voice?

A. And said, "I am John". I recognized it as that of Yakovlev. I said, I told him that I had been fine. Now, the phrase used by Yakovlev was a code phrase which was employed to indicate whether there had been any suspicious signs about us, about my being watched, and my answer that [fol. 1219] I was fine was my code answer which indicated that there was no sign of any surveillance going on.

Yakovlev told me that he would meet me at the theatre—he didn't specify. He said at the theatre at 8 o'clock that night. And I said—I answered that I would be there.

Q. And what happened?

A. By the theatre I knew that Yakovlev meant the Earl Theatre where our last meeting had been scheduled.

Q. Now, on that evening did you appear at the Earl Theatre?

A. At exactly eight o'clock I was in the upstairs lounge of the Earl Theatre in the Bronx.

Q. What happened there?

A. There I was accosted by a man who showed me a torn piece of paper which Yakovlev and I had prepared on that night in July in Astoria.

Q. Are you referring to Government's Exhibit 14-A and B in evidence (showing)?

A. Yes, I am.

Q. And are you now telling the jury that one part of that exhibit was shown to you?

A. Yes, it was.

Q. And did you have the other part?

A. I had the matching part.

Q. Did you match the two papers at that time?

A. We did not match them. I was just shown this part.

[fol. 1220] Q. And then what happened?

The Court: What did you mean by accosted? I don't quite understand what you mean.

The Witness: The man who met me was not Yakovlev. He was——

The Court: Is that all you care to convey by the word accosted?

The Witness: No. I would like——

The Court: Go ahead.

The Witness: —to convey more. The man was not Yakovlev. He was tall, about 6 feet 2, had blond hair, and a very determined feature. He walked with a catlike stride almost on the balls of his feet, and he told me, after showing me——

Mr. E. H. Bloch: One moment. I object to what he told him. It wasn't one of the defendants.

Mr. Lane: Well, it isn't necessary, your Honor, to get that. It isn't necessary. It isn't too important.

The Court: All right. Don't tell us what he told you.

Q. Now as a result of your meeting with this individual whom you just described, what did you do?

A. As a result of the meeting I had with the man I met in the lounge of the Earl Theatre I went to the southwest [fol. 1220a] corner of 42nd Street and Third Avenue, and there later that evening met Yakovlev.

Q. Now, was there anybody with you and Yakovlev at that time?

A. No, there was not.

Q. Did you have a conversation?

A. Yes, we did.

[fol. 1221] Q. What was the conversation?

A. Yakovlev asked me if I had anything further from Dr. Fuchs in the interim. I told him I did not. Yakovlev

then apoligized for not having seen me in almost ten months, but he said it was unavoidable, that he had to lie low during that period. We took a walk and we sat down at a bar on Second Avenue. There Yakovlev told me that he was very glad that I was now working in New York. He said it would put much less of a strain upon me as regards to meeting my Soviet contact. Yakovlev told me that I should begin to plan now for a mission which he had. He said that he wanted me to go to Paris, France, beginning in March of 1947. Yakovlev told me I was to go first to London, and from London to take a plane to Paris. He gave me a sheet of paper, on which was typed—a sheet of onionskin paper—and on it was typed the following information regarding a meeting I was to have in Paris. I was to meet a physicist——

Mr. E. H. Bloch: If the Court please, this may seem technical but will the witness tell us what happened to that piece of paper? Otherwise I will have to object to it on the grounds it is secondary evidence.

[fol. 1222] The Court: What happened to the piece of paper?

The Witness: I destroyed that piece of paper just a day or so before Memorial Day of 1947, and just about a few minutes before Agents Shannon and O'Brien of the FBI came to question me about my relationship with Abe Brothman.

Mr. E. H. Bloch: I must say, your Honor, this presents a rather novel proposition to me in connection with the secondary evidence rule. It is my understanding that where a witness wilfully destroys a document, he can't introduce secondary contents of it. Of course, I am not sure of my position in the light of the context of the charges, but may I make objection to save the record?

The Court: All right.

Mr. Lane: Well, your Honor, we withdraw the question and we withdraw the answer.

The Court: All right. I must say, Mr. Lane, you have been very helpful to the Court.

Q. Now, was there any discussion at that time about the name Brothman?

A. Yes, there was. Yakovlev began to discuss with me the means by which I should manage to get off from work, in order to make this trip to Paris. I told Yakovlev that [fol. 1223] once the pressure of work at Abe Brothman and Associates had eased up a bit—and then Yakovlev almost went through the roof of the saloon. He said, "You fool:" He said, "You spoiled eleven years of work". He told me that I didn't realize what I had done, and he told me that I should have remembered that some time in the summer of '45 he had told me that Brothman was under suspicion by the United States Government authorities of having engaged in espionage and that I should have remembered it. Yakovlev threw down on the table where we were sitting, the bar, an amount of money which was about two or three times the actual cost of the drinks which we had had, and he dashed out of the place. I walked along with him for a while, and he kept mumbling that I had created terrible damage and that he didn't know whether it could be repaired or not. Yakovlev than told me that he would not see me in the United States again, and he left me.

Q. Now, during the period between the middle of June of 1944 and December 26 of 1946?

A. Yes.

Q. That was your last meeting with Yakovlev?

A. That is right.

Q. During that period of time did you have any conversations with a man by the name of Dean Slack?

A. I had conversations about—about three or four con- [fol. 1224] versations with a man called Alfred Dean Slack.

Q. As a result of those conversations, what did you do?

A. As a result of those conversations I turned over to Yakovlev information relating to the——

Q. Now, just a minute. I haven't asked you what the contents were.

A. I see, I am sorry.

Q. I merely want to know what you did.

A. I turned over information to Yakovlev.

Mr. E. H. Bloch: If the Court please, I would be obliged if the Court would just tell the jury that Alfred Dean Slack is not a defendant in this case, nor is he a co-conspirator.

The Court: That is right, he is neither a defendant nor a co-conspirator.

Q. Now, prior to your association with Yakovlev, were you associated with anyone else?
A. Yes, I was.
Q. Who was that?

Mr. E. H. Bloch: Would you fix the time, please?
Mr. Lane: Well, I think he has testified that he met Yakovlev in March of 1944. I want to know——
Mr. E. H. Bloch: Prior.
Mr. Lane: On that day, just before he met, before he became associated with Yakovlev.
Mr. E. H. Bloch: Well, I object to it upon the ground it is not within the corners of the indictment.
[fol. 1225] Mr. Lane: I withdraw the question.

(Government's Exhibit 15 marked for identification.)

Mr. Lane: I offer Government's Exhibit 15 for identification into evidence, your Honor.
Mr. E. H. Block (after discussion with other defense counsel): There is no objection to the introduction of this document.

(Government's Exhibit 15 for identification marked in evidence.)

The Court: Are you going to read portions of it to the jury?
Mr. Lane: Yes, sir; I would like to.

Q. Now I show you Government's Exhibit 15 in evidence and I ask you to look at the picture attached thereto and tell me if you recognize that individual (showing)?
A. Yes, I do.
Q. Who is it?
A. That is Anatoli Yakovlev.

The Court: Would you be able to shorten this perhaps if we recessed until tomorrow?
Mr. Saypol: No, we can get it right in.
Mr. Lane: That is the last thing I am going to do.

Q. Now, is this man whose picture I showed you on Government's Exhibit 15 in evidence and whom you have iden-
[fol. 1226] tified as Yakovlev, is that the party whom you knew as "John"?

A. Yes, it is.

Mr. Lane: Now, I am going to read to the jury portions of the certified document from the Department of State.

It is entitled "Foreign official status notification", and it has on here the full name, "Anatoli Antonovich Yakovlev".

The second item: "Name of Government and agency or department thereof," and it is the "Consulate General of the USSR, New York," United States of Soviet Russia.

"Present nationality—USSR.

"Place of birth"—I will have to spell that—"B-o-r-i-s-og-l-eb-s-k", that is the "City *of* town"; "States" is V-o-r-n-n-e-z-h, and the "Country" is the USSR.

"Date of birth—May 31, 1911."

[fol. 1227] "Port or place, date and manner of last arrival in United States and name of vessel, if any:—San Pedro, February 4, 1941, S.S. Ecuador."

"American visa issued by American Embassy in Moscow.

"Duties terminated: Left New York December 1946 by ship.

"Business address: 7 East 61st Street, New York, N. Y.

"Home address: 6 East 87th Street, New York, N. Y.

"Capacity in which signer is now serving, giving title of position, if any: Clerk.

"Date of assumption of present duties in the United States: February 8, 1941.

"Detailed statement of signer's present and proposed activities, including the place or places of performance and for whom performed or to be performed: Clerical duties.

"Nature and place or places of occupation or employment during the last five years, 1936-1941: Student, engineering —Economic Inst., Moscow".

Then attached hereto is a smaller notation, which is headed: "Department of State, Washington.

[fol. 1228] "Anatoli Antonovich Yakovlev has notified the Secretary of State of his (or her) status in the United States as an official (or employee) of the Union of Soviet Socialist Republics Government"; and that is dated April 3, 1941.

On the back of that card is the notation:

"The Secretary of State must be notified of any change in the status of the holder of this receipt".

Attached thereto also is another card:

"Department of State", giving the name "Anatoli Antonovich Yakovlev, 6 East 87th Street, New York, N. Y.," and it sets forth that Yakovlev is a citizen *of* subject of the Soviet Union, "Whose status as an official (or employee) of the Soviet Government has been notified to the Secretary of State by the Embassy *all* legation of the country by which he is employed".

At the bottom of this particular document is the picture of Yakovlev attached thereto and it also contains Yakovlev's signature.

(Mr. Lane hands exhibit to the jury.)

Mr. Lane: Could we adjourn for the day, your Honor? I have one or two more items that I would like to take up.

The Court: You had better take the exhibit back then and [fol. 1229] show it to the jury the first thing in the morning.

We will recess until 10:30 tomorrow morning, Ladies and gentlemen, and again I want to admonish you that you should not read the newspapers in connection with this case on trial, or anything related to it; or listen to the radio, watch television, read any magazines which in any way deal with this case or anything related to it, and I assume that you followed my admonition right along in this case.

You are excused until 10:30 tomorrow morning.

(Adjourned to March 16, 1951, at 10:30 a.m.)

[fol. 1230] New York, March 16, 1951; 10:30 a.m.

Trial resumed

(Jury in the jurybox.)

HARRY GOLD resumed the stand.

Mr. Lane: The Government, your Honor, has no further questions.

The Court: Any cross?

Mr. E. H. Bloch: The defendants Rosenberg have no cross-examination of this witness.

Mr. Phillips: No cross.

The Court: The witness is excused.

(Witness excused.)

The Clerk: George Bernhardt.

GEORGE BERNHARDT, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. What is your occupation?

A. I am a physician.

Q. Will you keep your voice up, Doctor, so that all members of the jury, and counsel, can hear you, please?

[fol. 1231] A. Yes.

Q. Are you duly licensed to practice in the State of New York as a medical doctor?

A. I am.

Q. For what length of time have you had your license to practice as such?

A. Since 1936.

Q. What is your home address, Doctor?

A. 40 Monroe Street, New York.

Q. Do you know the defendant Julius Rosenberg?

A. I do.

Q. Under what circumstances have you come to know Julius Rosenberg?

A. I took care of his children for several years and I was his physician for about six or eight months.

Q. Do you see Julius Rosenberg sitting here in the courtroom?

A. I do.

Q. Will you point him out, please?

A. (Witness stands and points) Right there.

Mr. Kilsheimer: May the record indicate that the witness has identified the defendant.

The Court: Yes.

Q. I call your attention to the spring of 1950. Did you have a conversation with Julius Rosenberg at that time?

Mr. E. H. Bloch: Now, if the Court please, I would like in the first place the time fixed and then I think the ques-[fol. 1232] tion is very general.

The Court: As best as you can fix the time.

Mr. E. H. Bloch: I think the question is general.

Q. Can you fix the time when you had a conversation with Julius Rosenberg in the spring of 1950?

A. Yes, I can.

Q. When was it?

A. I think the latter part of May.

Q. Was this conversation face to face in person?

A. No, sir; it was not.

Q. Will you state how you had the conversation?

A. This was a telephone conversation.

Q. Did you recognize the voice on the other end of the line?

A. Yes, I did.

Q. Whose voice was it?

A. Julius Rosenberg's.

Mr. E. H. Bloch: Your Honor, may we approach the bench?

The Court: All right.

(The following proceedings were had at the bench out of the hearing of the jury:)

Mr. E. H. Bloch: Your Honor, evidently there is going to be some conversation here between this witness and the defendant Rosenberg.

The Court: Yes.

[fol. 1233] Mr. E. H. Bloch: I am not saying to the Court this as of my own knowledge but I have been informed that this witness was told either directly or indirectly that this particular telephone conversation was a result—was a wire-tapped conversation. Now if that is so then under the Nardone cases and the cases following it——

The Court: All right, let us find out.

Is there any wiretapping?

Mr. Saypol: A lot of arid nonsense, and I do not like this procedure. I object to it. Let us hear the testimony.

The Court: It is ridiculous.

Mr. Saypol: I do not like these interruptions. Counsel ought to know the way to proceed.

Mr. E. H. Bloch: Now Mr. Saypol——

The Court: All right.

Mr. E. H. Bloch: Wait, your Honor.

The Court: Yes.

Mr. E. H. Bloch: If this particular conversation, this telephone conversation was not wiretapped, of course, he can testify. If, on the other hand, it was, I would like to be able to ask a few questions.

The Court: You just heard the answer, it was not wiretapped. Why go further when the United States Attorney told you that?

[fol. 1234] Mr. Saypol: I haven't the slightest knowledge that it was ever indulged in.

Mr. E. H. Bloch: O.K.

Now, look, Mr. Saypol, I said I didn't know this of my own knowledge.

Mr. Saypol: I know, but those things don't help any.

Mr. E. H. Bloch: Now don't you think it is my duty——

The Court: Yes. All right, let us not get into it any further.

(The following proceedings were resumed in the presence and hearing of the jury:)

The Court: Now the last question was, did you have a conversation with Mr. Rosenberg in the Spring of 1950.

Mr. E. H. Bloch: May I ask your Honor to direct the witness to a mere yes or no answer, because I am going to ask your Honor's permission for one voir dire question in connection with the relationship.

By the Court:

Q. Did you have such a conversation?

A. Yes, I did.

Q. And you recognized the voice?

A. Yes, sir.

Q. On the telephone?
A. On the telephone.
Q. And are you able to fix the time in the spring?
[fol. 1235] A. Yes.
Q. When was that?
A. Some time in the latter part of May.
Q. 1950?
A. Yes.
Mr. Saypol: Will your Honor bear with me for a moment?
The Court: Yes.
Mr. Saypol: I did not mean to interrupt, excuse me.
The Court: Go ahead, I am through.
(Mr. Saypol confers with Mr. Kilsheimer off the record.)

By Mr. Kilsheimer:

Q. In this conversation which you say you had with Mr. Rosenberg, was it in relation to treatment for himself or for someone else?
A. For someone else.
Q. Will you state the conversation which you had with Rosenberg at that time?
A. He said, "Doctor, I would like to ask a favor of you. I would like to know what injections one needs to go to Mexico", and I hesitated a little, and he laughed and said, "Don't get scared, it is not for me; it's for a friend of mine". And I then proceeded to give him that information, and then as an after-thought I——

Mr. E. H. Bloch: I move to strike out "I then proceeded [fol. 1236] to give him that information".
The Court: Tell us what information you gave him.

Q. Tell us what information you gave him.
A. I told him that he would need typhoid injections and a smallpox vaccination, and I then asked him if this friend of his was a veteran, telling him that if he was a veteran all he would need would be booster doses instead of going through the entire series of injections, and he said. "Yes, he is a veteran".
I then asked him if this friend of his was going to stay in Mexico City or whether he was going to go into the interior because if he went into the interior he would need

typhus injections, and he said, "Yes, he will probably go into the interior", and then I told him that if he decided to go, to give me a little notice because I don't usually stock a typhus vaccine and I would have to get it, and he said he would let me know.

Q. Did that complete the conversation which you had with him?

A. That is right.

Mr. Kilsheimer: I have no further questions.

[fol. 1237] Cross-examination.

By Mr. E. H. Bloch:

Q. Doctor, was this the only conversation you had with Rosenberg about Mexico?

A. To the best of my knowledge it is.

Q. Now Doctor, have you brought any records with you to indicate when you treated the defendant Julius Rosenberg as your patient?

A. No, sir.

Q. Can you refresh your recollection now as to whether Julius Rosenberg had influenza in the spring of 1950?

A. I know that he was ill during that time or at least I believe so. I am sure that that was not the diagnosis.

Q. Well, whatever the diagnosis was, he was ill in the spring of 1950, is that right?

A. I believe so.

Q. Will you tell us now what diagnosis you made of this condition at that time?

A. I think he had a strep sore throat.

Q. Was he confined to bed?

A. Yes, sir, he was.

Q. Do you know how long he was confined to bed?

The Court: What is the relevancy of this?

Mr. E. H. Bloch: I am developing something.

The Court: You are developing that he was confined to bed and was sick?

Mr. E. H. Bloch: No. This is leading up to something. Will your Honor bear with me. Let me assure you——

[fol. 1238] The Court: Let us get to the main problem.

Mr. E. H. Bloch: Yes, I know. I am trying to get to the main problem.

The Court: Go ahead.

(Last question read.)

The Witness: I would just venture a guess and say three to five days.

Q. Was he ill only on one occasion in the spring of 1950?

A. No, sir, I believe he was ill more than once.

Q. Can you tell us what his physical condition was in or about the month of May 1950?

The Court: What do you mean by that? That is too general,—physical condition.

Q. Was he healthy or was he in a run-down condition?

The Court: Oh, no, no.

Mr. E. H. Bloch: Well, I am trying to get from this expert physician the state of his physical health.

The Court: I don't see the relevancy.

Mr. E. H. Bloch: I am coming to that, your Honor. I promise you I will tie this up.

The Court: I think your question is too general anyway —was he run down or in good health.

Q. Well, did you treat him for any ailment in May 1950?

[fol. 1239] A. Yes, sir.

Q. And is it not a fact that Julius Rosenberg was a hay-fever victim?

A. That is so.

Q. And is it not a fact, Doctor, that he used to come to your home in Knickerbocker Village to receive from you hay fever injections?

A. That is a fact.

Q. And is it not a fact that in or about that period he came regularly about once a week or once every two weeks to get these hay fever injections?

A. That is right.

Q. And is it not a fact, Doctor, that when he came to your home in Knickerbocker Village you usually gave him those injections in your living or sitting room?

The Court: Oh, now you are going far afield and I won't permit it. Now let us get to the issue here. I am not interested in these injections or where they were given.

Mr. E. H. Bloch: Well, this is to locate a conversation which this witness is testifying about.

The Court: Let us get to the conversation and then if you don't get the answer you want I will permit you to ask him questions to refresh his recollection.

Mr. E. H. Bloch: All right.

Q. Now Doctor, do you remember discussing the question of vacations with Julius Rosenberg in or about May 1950 [fol. 1240] in your living room while he was waiting in that living room for the result of the hay fever injection that you gave him that evening?

A. Offhand I do not.

Q. Let us see——

By the Court:

Q. Did you ever discuss with Julius Rosenberg his taking a vacation in Mexico?

A. No.

By Mr. E. H. Bloch:

Q. All right. Now, Doctor, do you remember one evening when Julius Rosenberg came around to get a hay fever injection when you showed him pictures of you and the members of your family while you were vacationing in Cape Cod?

A. I do not recall showing him those pictures. I have shown those pictures to many people but I have no recollection of showing them to Mr. Rosenberg.

[fol. 1241] Q. You have shown those pictures to your patients?

A. Yes.

Q. Did you ever discuss with Julius Rosenberg in your living room at your home various places in or out of the United States, where people go for vacations, at least well-known vacation resorts?

A. I have no recollection of that.

Q. None whatsoever?

A. Not at this time, no.

Q. Did you have a patient by the name of Schreier?
A. Yes.
Q. Was it Mr. Schreier or Mrs. Schreier?
A. Mr.
Q. And was Mr. Schreier also a hay fever victim?

Mr. Kilsheimer: I object to this, your Honor. This is not proper cross-examination.
Mr. E. H. Bloch: I withdraw that.

Q. Was Mr. Schreier also a patient of yours?
A. Yes.

The Court: What is the relevance of that?
Mr. E. H. Bloch: I am coming to it.
The Court: You are coming to it all morning long and I haven't seen it yet.
Mr. E. H. Bloch: Well now, if the Court please, I am going to ask the witness to answer the question. I hope the Court will bear with me. I haven't many more ques-
[fol. 1242] tions.
The Court: Ask the question about Mr. Schreier. Now, I don't want all this surrounding information.
Mr. E. H. Bloch: I am trying to refresh his recollection.
The Court: All right, ask him whether he said something to Mr. Schreier. Let's get to it.
Mr. E. H. Bloch: All right, may he answer the question as to whether Mr. Schreier was a patient of his?
The Court: Yes.
Mr. E. H. Bloch: In about May 1950?
The Court: All right, I will permit him to answer.

A. Yes, he was.
Q. Do you remember one night in your house discussing with Mr. Schreier and with Mr. Rosenberg Cape Cod and various other vacation resorts? Would that refresh your recollection?
A. I am afraid it does not, specifically. I have discussed Cape Cod with many people.
Q. And you also had shown pictures of Cape Cod?
A. That's right, but I have no recollection of this specific——
Q. Now, when was the first time, Doctor, that the agents

of the United States Government, or the representatives of the FBI, particularly, came around to see you?

[fol. 1243] A. The early part of August, 1950.

Q. Do you remember what time they came in to see you?

A. Two o'clock in the afternoon.

Q. Do you recognize any of the agents of the FBI, who came around to see you, in this court?

A. No, sir.

Q. Do you know the name of the man or men——

Mr. Bloch: I withdraw that.

Q. How many men came around to see you?

A. Two.

Q. Do you remember their names?

A. I recall one name: I don't recall the other.

Q. Would you give it to us, please?

A. A Mr. Stevenson, I believe.

Q. Did Mr. Stevenson represent himself to you — be an FBI representative?

A. The other man did, but I don't recall his name.

Q. At any rate, one of the two men told you they were from the FBI; is that right?

A. That's right.

Q. And did they ask you at that time whether or not you had any conversations with Julius Rosenberg about Mexico?

A. Yes, they did.

Q. And is it not a fact, Doctor, that at that time you told them that you can't remember any such conversation?

A. Well, that is not exactly correct.

Q. Well, tell us what you told them at that time.

[fol. 1244] A. They asked me a very specific question.

Q. What was the specific question?

A. The question they asked was whether a Mr. Rosenberg had ever approached me to sign a certificate of vaccination for his brother-in-law without having vaccinated him.

Q. What did you say to that?

A. I said, "To the best of my recollection, he had not".

Mr. E. H. Bloch: That is all.

By the Court:

Q. Doctor, did they ask you then or did you subsequently volunteer this information concerning this telephone call of Mr. Rosenberg, which you have testified to about here?
A. I recalled this conversation two or three days later and I volunteered the information.
Q. You volunteered the information to the FBI?
A. Yes.

Mr. E. H. Bloch: Just one further question. I just want to get the time.

By Mr. E. H. Bloch:

Q. When, specifically, did the FBI representatives come around to you to try to elicit this information from you?
A. It was at two o'clock on a Monday afternoon.
Q. I mean what month?
A. In August.
Q. Do you remember what part of August?
A. I would think the end of the first week or the be-
[fol. 1245] ginning of the second. I couldn't place it any closer than that.
Q. And you say that this telephone conversation took place in the latter part of May?
A. That's right.

Mr. E. H. Bloch: That is all.
The Court: Anything further?
Mr. Kilsheimer: I have no further questions.
The Court: Thank you, Doctor.

(Witness excused.)

The Court: William Danziger.

William Danziger, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Cohn:

Q. Mr. Danziger, where do you live?
A. I live at 124 Featherbed Lane, in the Bronx.

Q. In the Bronx?
A. Yes.
Q. How old are you?
A. 33.
Q. Are you married?
A. Yes, I am.
Q. Have you any children?
A. Yes.
Q. How many?
A. Two.
Q. Now, are you a graduate of any college?
A. Yes, I am.
Q. What college?
A. The College of the City of New York.
Q. What year were you graduated?
A. In June 1938.
[fol. 1246] Q. Do you know the defendant Morton Sobell?
A. Yes, I do.
Q. Do you see him here in court?
A. Yes, I do.
Q. Where is he seated?
A. Right there (pointing).
Q. Where did you first meet Sobell?
A. We attended high school, Stuyvesant High School, together.
Q. Was he in your class at City College as well?
A. Yes, he was.
Q. Do you know the defendant Julius Rosenberg?
A. Yes, I do.
Q. Do you see him?
A. Yes.
Q. Seated at the defense table?
A. Yes.
Q. Was he in your class at City College, too?
A. Yes, he was.
Q. Had you known him from high school, or anything like that?
A. No, I did not.
Q. You first met him in City College; is that right?
A. That is correct.
Q. With whom did you have more frequent contact in college, Sobell or Rosenberg?

A. Sobell.

Q. After you had graduated from City College, did you ever have occasion to see Sobell again?

A. Yes, we worked together for some years at the Bureau of Ordnance of the Navy Department, in Washington.

Q. How about Rosenberg?

A. No, I haven't much occasion to see him.

[fol. 1247] Q. Did you see Rosenberg between the years 1938 and 1950?

A. No.

Q. Who left the Bureau of Ordnance first, you or Sobell?

A. I think I did.

Q. After you left there, did you see him from time to time?

A. Yes, I did.

Q. Did you have any correspondence with him?

A. Yes, I did.

Q. You continued your friendship; is that correct?

A. Yes, I did.

Q. You would write to him and he would write to you?

A. That is correct.

Q. You did not see Rosenberg during this period?

A. That is correct.

Q. Now, I want to come to the year 1950. Was there a time in 1950 when you left Washington and moved to New York?

A. Yes, there was.

Q. About what month was that?

A. I left Washington in March of 1950 and my family joined me in New York in May of 1950.

Q. After you moved up to New York in the spring of 1950, did you have occasion to renew your social acquaintance with the defendant Sobell?

A. Yes, I did, I visited at his house in May of 1950.

[fol. 1248] Q. Where did he live then?

A. He was living in Flushing, Long Island.

Q. You say you visited his home; is that right?

A. Yes, I did, with my wife.

Q. Where are you employed?

A. I am employed at the Academy Electrical Products Corporation.

Q. What is the address of that corporation?

A. 4849 Broadway.

Q. At the time of your visit to Sobell's home in May of 1950, did you have occasion to mention your employment to him?

A. Yes, I did.

Q. Did you tell him what type business you were in?

A. Yes, I told him I was in the electrical business.

Q. Did you have any conversation with him about your business?

A. Well, I told him I was designing electrical products.

Q. What did he say to you?

A. Well, no, I don't recall any particular comment.

Q. Did he suggest you make any contact——

Mr. Phillips: I object to this suggesting to the witness.

The Court. Overruled.

Mr. Phillips: Exception.

Q. Did he mention anything to you concerning any [fol. 1249] contact you might make in connection with your business?

A. Well, you might consider this to be, that is, he mentioned the fact that Rosenberg was in the machine shop business.

Q. You had not seen Rosenberg since college days; is that right?

A. That's right, I had not, and——

Q. Did he give you Rosenberg's business address?

A. Yes, he did.

Q. Did he make any suggestion?

A. Well, in talking about the work I was doing, when he mentioned the fact that Rosenberg was in the machine shop business, I indicated my place of business occasionally farms out machine shop work and it was at my suggestion that I got his, Rosenberg's address.

Q. He gave it to you; is that right?

A. Yes, he did.

Q. Did you thereafter have occasion to see Rosenberg?

A. Yes, I did.

Q. Did you tell him that you had been referred to him by Sobell?

A. Yes.

Q. When did you see Rosenberg, about when; do you remember that?

A. I think it was in the latter part of June, 1950.

Q. Where?

A. Well, I went down to his place of business and he [fol. 1249a] wasn't there, and the men in the shop told me he was out at a stamping place. I was at that time rather interested in getting an estimate on stamping, so I went out to the stamping place and saw him out there.

Q. Did you have a conversation with him there?

A. Yes.

[fol. 1250] Q. Did you see him on any other occasions?

A. Yes, I saw him sometime in July.

Q. July 1950—where?

A. At his place of business.

Q. Did you have any conversation with him then?

A. Well, It was rather brief, I had an appointment elsewhere. I dropped in primarily to look over the shop facilities, and he mentioned to me at that time that he was rather tied up and that he probably couldn't accept any work for some months, for me to contact him some time in the future.

Q. Now I think you told us your conversation with Sobell in which you gave Rosenberg's address was in May of 1950?

A. Yes.

Q. Did there come a time in June of 1950 when you saw Sobell?

A. Yes.

Q. Where?

A. I saw him at his home.

Q. Did you go out there or did you go by appointment?

A. Well, I called him at his home to indicate that I needed an electric drill to do a repair around my home, and he mentioned then that he was getting ready to leave for a vacation in Mexico, and that he was leaving rather shortly and if I wanted the drill, for me to come out and get it.

Q. And did you go out to his house?

A. Yes, I did.

[fol. 1251] Q. Who was present when you arrived there?

A. He was, his wife, *his wife*, his sister-in-law and their children—and the children.

Q. What was the name of his sister-in-law, do you remember that?

A. I think it is Edith Levitov.

Q. What was the physical appearance of the home at that time?

A. Well, it was quite evident that there was packing going on, there were valises standing there. The rest of the house was not too disorderly.

Q. Was there any car in the driveway?

A. Yes, there was.

Q. What was the condition of the car?

A. Well, there were valises, some valises in the car. I think the trunk was open.

Q. Did you get the electric drill?

A. Yes, I did.

Q. Did you have any conversation with Sobell?

A. Very brief.

Q. What did he say to you in the course of that conversation?

A. Oh, merely mentioned the fact that he was leaving and——

Q. Did he tell you what means of transportation he was going to use?

A. Yes. He said he was flying.

Q. Did he tell you where he was going?

A. Yes. He said he was going to Mexico—Mexico City.

Q. Mexico City, is that right?

A. Yes.

[fol. 1252] Q. Did you thereafter leave the house?

A. Yes, I did.

Q. About when was this, would you say?

A. What is that?

Q. About what day in June was this, would you say?

A. Oh, the 20th of June.

Q. Around the 20th?

A. Yes.

Q. About how long were you at his home that night?

A. Oh, about 10 minutes.

Q. Did there come a time after that night when you heard from Sobell?

A. Yes, I did. I received a letter from him.

Q. How long thereafter?

A. About a week.

Q. Did you note the post-mark on that letter?

A. Yes, it was post-marked Mexico City.

Q. Now was this letter addressed to you at your home or your place of business?

A. At my place of business.

Q. Care of the Academy?

A. At the Academy Electrical Products Corporation.

Q. You noticed the postmark was Mexico. Now was there a return address on the envelope?

A. Yes, there was.

Q. Will you tell us what you remember concerning that return address?

A. The return address was M. Sowell.

[fol. 1253] Q. Sowell.

A. S-o-w-e-l-l.

Q. Do you remember the street?

A. No, I don't remember the street address but it was in Mexico City.

Q. Now, in the entire period of time of your acquaintance with Sobell, did you ever know him to use the name S-o-w-e-l-l?

A. I do not.

Q. Did you open the letter?

A. Yes, I did.

Q. Will you tell us what was inside of the letter?

A. There was a letter addressed to me and several enclosures.

Q. Do you remember the contents of the letter addressed to you?

A. It merely—the letter said "Dear Bill, had a nice trip, held the kid on my lap all the way, and located a place to stay". That was the contents.

Q. Now, were there any other communications to you in that envelope? This first one that you have described concerned only social pleasantries?

A. Yes.

Q. Is that a fair statement?
A. Yes.
Q. Were there any other communications in that envelope to you?
A. Yes, there was a note which said "Please fo-ward the enclosures and I will explain to you when I get back".
Q. "I will explain to you when I get back"?
A. Yes.
[fol. 1254] Q. About how many enclosures were there?
A. There were two.
Q. What were the enclosures?
A. One was addressed to a sister-in-law in Arlington, Virginia.
Q. Which sister-in-law was that?
A. Miss Edith Levitov.
Q. That was the one who was at his home that night?
A. Yes.
Q. Readying the trip to Mexico?
A. Yes.
Q. What was the other communication?
A. The other communication was a short note to his parents.
Q. Now, what did you do with the note to his parents?
A. I delivered it to their home.
Q. How about the note to his sister-in-law?
A. I placed it in an envelope and mailed it.
Q. Was there anything else in that envelope?
A. Well, on this note he said "Will you please deliver my address to Mr. Max Pasternak.
Q. Do you know who Max Pasternak was?
A. I knew he was related in some way.
Q. Did he repeat the address?
A. Yes, he did.
Q. What address did he give at which he could be reached?
A. M. or Morty Sowell with a street address.
Q. Is that S-o-w-e-l-l again?
A. Yes.
Q. And did you communicate with Mr. Pasternak?
[fol. 1255] A. Yes.
Q. Did you advise him under what name and address Sobell could be reached?

A. I didn't actually reach Mr. Pasternak. I delivered the note to Mr. Pasternak's residence.

Q. The note you had received from Sobell, is that right?

A. That is right.

Q. Did you respond to this letter from Sobell?

A. Yes, I did.

Q. At what address did you communicate with him?

A. I used the address which was the return address given to me.

Q. Under what name?

A. M. Sowell, or Morty Sowell in Mexico City.

Q. S-o-w-e-l-l? Is that right?

A. Yes.

Q. Did you get any further communication from Sobell?

A. Yes, I did.

Q. About when was the next one?

A. Oh, about two weeks after that, two weeks after the first one, sometime about the middle of July.

Q. And where did you receive the second communication?

A. At my place of business, the Academy Electrical Products Corporation.

Q. Did you notice the postmark on the envelope?

A. Yes. It was Mexico City.

[fol. 1256] Q. Did you recognize the writing on the envelope?

A. It was familiar to me as Morty Sobell's writing.

Q. Was there a return address*ed* on this envelope?

A. Yes, there was.

Q. Do you remember the name of the street that was mentioned?

A. Well, I have a recollection of Cordova or Corbova or some similar street address.

Q. What name was given on the envelope? Was Sowell used this time?

A. It was M. or Morty Levitov.

Q. M. or Morty Levitov this time?

A. Yes.

By the Court:

Q. Let me ask you in connection with these two return addresses, one of M. Sowell and the other of Morty Levitov, when the return address appeared on the envelope, was it M. Sobell in care of M. Sowell or Morty Levitov, or just the name M. Sowell?

A. Just the name.

Q. M. Sowell and the other one M. Levitov.

By Mr. Cohn:

Q. Did you open this second letter, the one with the name M. Levitov?

A. Yes, I did.

Q. What were the contents of that? Were there any papers inside the envelope?

A. Yes. There was a letter for me, an enclosure for Miss Edith Levitov and a short additional note which he asked me to forward, using somewhat similar phrase [fol. 1257] ology, "I will let you know about it when I get back".

Q. Let you know about what?

A. The note said "Please forward enclosure and I will explain when I get back". Somewhat similar to the phraseology used the first time.

Q. There was no explanation contained in the letter; merely the statement that there would be an explanation at some time?

A. Yes.

Q. Did you forward the letter to Miss Levitov?

A. Yes, I did.

Q. Was there anything else in the envelope?

A. No, there wasn't. That is, I made it clear that there was a letter to me.

Q. The one you described to us in which he said forward —

A. No. There was a letter saying "Dear Bill, I am having a nice time. I have moved from one place to another."

Q. He told you he had moved from one place to another?

A. Yes.

Q. You say you forwarded this note to Miss Levitov; is that right?

A. Yes, I did.

Q. Did you tell her how Sobell could be reached?

A. No, I did not.

Q. You merely forwarded the letter; is that right?

[fol. 1258] A. That is correct.

Q. Did you hear from him on any subsequent occasion?

A. No, I did not.

Mr. Cohn: No further questions.

Mr. E. H. Bloch: No cross.

Mr. Phillips: No cross.

Mr. Saypol: May we have a conference at the bench.

COLLOQUY BETWEEN COURT AND COUNSEL.

(The following proceedings took place at the bench out side the hearing of the jury.)

Mr. Saypol: I now have some testimony which it is possible there may be a stipulation on: The fact of the registration of Harry Gold at the Hotel Hilton on June 3. I have a photostat of the registration card. I also have the original on the way, together with a witness if required. I have testimony as to the bank records. Then I have a completely new phase of testimony which I will start. I can't start it until next week. There are witnesses on the way from distant places.

May I first inquire of counsel whether they will stipulate as to the records or whether they will insist upon strict technical proof?

Mr. E. H. Bloch: I am speaking for myself again: I am certainly not going to insist on strict technical testi [fol. 1259] mony. In other words, Mr. Saypol, let us understand: You want incorporated in the record a concession that Harry Gold stopped at the Hotel Hilton in Albuquerque on June 3, 1945.

Mr. Saypol: I want to offer in evidence and have received a copy of the registration card as a record regularly kept in the course of business and show it to the jury.

Mr. E. H. Bloch: I certainly have no objection to that introduction.

Mr. Kuntz: We have no objection.

Mr. Saypol: I want also to get together the bank records

and also that testimony showing the deposits of the various amounts of money as testified to by the witness.

Mr. E. H. Bloch: Well Mr. Saypol, I certainly am not going to dispute the bank records but I would like to look at them.

The Court: I think he is entitled to look at them.

Mr. E. H. Bloch: Yes, before I make the concession.

Mr. Kuntz: I imagine there will be no problem about that.

The Court: You are not going to object.

Mr. E. H. Bloch: Oh, no.

[fol. 1260] Mr. Saypol: Will your Honor declare a recess and I will get them together and upon resumption of the recess——

The Court: Yes. While we are up here, let us lay out the future of the case, and this is off the record.

(Further discussion at the bench off the record.)

(The following proceedings were had in open court in the presence of the jury.)

The Court: Ladies and gentlemen, we will take a recess at this point.

You may be excused.

(Short recess.)

[fol. 1261] (Jury in the jurybox.)

The Court: Before we proceed, would you like to offer those exhibits first, Mr. Saypol?

Mr. Saypol: If the Court will allow me.

The Court: Yes.

Mr. Saypol: We are at a phase in the trial now where there is certain evidence, documentary, as to which, of course, the Government has available a number of witnesses from distant places to establish the authenticity of the records, hotel registration records, bank records. If counsel for the defendants are agreeable, I shall proceed to put in evidence a document, rather, a photostat of a document, relating to the witness Harry Gold's presence in Albuquerque on June 3, 1945. Thereafter, I shall suggest to the Court that a recess be taken until the next adjourned day. At that time I shall have available similar docu-

mentary proof, which, of course, will be exhibited to the defendants, and if agreeable, again time will be saved by putting photostats of those documents in evidence, in relation to certain bank deposits.

So, may I now inquire of the defendants whether there is any objection to the offer in evidence of this photostatic record?

Mr. E. H. Bloch: As I have already indicated to the [fol. 1262] Court and to Mr. Saypol, the defendants have absolutely no objection to this document being used, and no objection will be made that it is secondary evidence, and we concede that whatever the document there says, it was made in the regular course of business by the party whose records it comes from.

The Court: You have no objection whatsoever to its introduction?

Mr. E. H. Bloch: No, none whatsoever.

Mr. Saypol: May it be marked then?

(Marked Government's Exhbiit 16.)

The Court: That is the registration of the Hotel Hilton?

Mr. Saypol: Yes. I will ask leave to read it to the jury and exhibit it to the jury, both the face and the reverse side of the photostat received.

May I proceed to read it to the jury?

The Court: Yes.

(Government's Exhibit 16 exhibited and read to the jury.)

Mr. Saypol: Now, perhaps if the Court is so disposed, I would ask leave to take the end-of-the-week recess at this time.

[fol. 1263] The Court: Ladies and gentlemen of the jury, what will happen from time to time during the course of a trial of this magnitude is sometimes the witnesses are disposed of a little quicker than is anticipated——

Mr. Saypol: I must interrupt, if the Court will allow me. I think when counsel were at the bench I advised the Court that I would be prepared to make certain answers to queries of the Court and I am so prepared if the Court desires me to.

The Court: Yes. There are some witnesses coming from distant places that aren't available as yet today, so we will

recess until Tuesday morning. We will not have a session Monday. We will recess until Tuesday morning.

Now before we do so I think it is fair that the jury have an idea of how much longer this case is going to take. Most of you are engaged in business and you are entitled to know it; and while I have somewhat of a reputation, probably undeservedly so, for moving a trial along, I didn't anticipate that I would be able to move it along with the dispatch that we have moved this trial.

Now, Mr. Saypol, about how much longer do you think the Government's case will take?

Mr. Saypol: Of course while the trial has continued I [fol. 1264] have considered the status of the case right along from the point of view of the prosecutor supplying the available evidence to establish that which is required of me. In a case of this type defendants have been, as provided in the statute, supplied with a list of witnesses, in the words of the law, to prove the indictment. I am satisfied now that on the presentation of my colleagues and myself I have proven my case to be——

Mr. Kuntz: Now——

The Court: What you are saying is in your judgement you are going to excercise your good judgment to do away with calling certain witnesses whom you consider to be merely cumulative—is that stating your position accurately?

Mr. Saypol: That puts it exactly. In other words, I have arrived at the point where I am close to a decision that anything further would merely be cumulative.

The Court: Of course you know how this Court feels about putting in cumulative evidence.

Mr. Saypol: Your Honor has indicated it to both of us, and I hope that I have demonstrated a disposition—I think the defendants, too—to move the case along.

The Court: Yes. Very well.

[fol. 1265] Mr. Saypol: That being so, I believe that next week, with the evidence to be elicited on the part of my colleagues and myself—next week or at the very latest, at the beginning of the following week—but no more than probably four or five more full court days I will be in a position to say to the Court that the Government rests.

The Court: In other words, you feel that at the outside the Government will need probably four more court days.

Mr. Saypol: That is my view.

The Court: And as I understand it, the defense, at the outside, will probably need five more days.

Is that a fair estimation?

Mr. E. H. Bloch: I think in the present posture of the case, that is approximate.

The Court: So it would appear, ladies and gentlemen, that there is a fair chance that the week after next this case might go to the jury—the week after next, and make your plans accordingly.

Now we have another thing that we might take up today in view of the fact that we are having an early adjournment, and that is the matter of next Friday, which is Good Friday.

Now, Mr. Foreman, what is the feeling of the jury on [fol. 1266] that?

The Foreman: Your Honor, we have agreed unanimously to work Good Friday morning.

The Court: To work Good Friday morning. Well, I think that I should congratulate you upon your industry, but let us hold that in reserve because I may decide to give you a holiday on that day.

All right, we will now recess—

Well, we will wait until after the jury has had an opportunity to see that exhibit. You may continue to look at it. Pass it around.

The Court is still in session.

(Jury completed its examination of the exhibit.)

The Court: Ladies and gentlemen, we will recess until 10:30 Tuesday morning. I wish you all a very pleasant weekend.

(Adjourned to March 20, 1951, at 10:30 a.m.)

[fol. 1267] New York, March 20, 1951;
10:30 o'clock a.m.

Trial resumed

Mr. Saypol: If your Honor will give me a moment to confer with counsel for the defendants I might save some time.

The Court: All right.

(Mr. Saypol confers with Messrs. Bloch and Mr. Kuntz.)

Mr. Saypol: Without objection I offer in evidence a photostatic copy of a ledger sheet together with a credit slip of the Albuquerque National Bank, Albuquerque, New Mexico, Savings Department, relating to the account of Ruth Greenglass, 209 North High Street, Albuquerque.

(Marked Government's Exhibit 17.)

Mr. E. H. Bloch: If the Court please, just to clarify the position of the defense, we have no objection to this exhibit being introduced because of the fact that it might be secondary evidence, but we ask the prosecution if the defense deems it advisable to use it any time in the future, to have [fol. 1268] the rest of the transcript of this account. I believe the prosecution has the rest of that transcript in its possession, is that correct?

Mr. Saypol: The account was produced by a representative of the bank and we shall be happy to make it available to counsel if they require it.

Mr. E. H. Bloch: Thank you.

The Court: You don't object to this on the basis either that a proper foundation has not been laid, aside from secondary evidence?

Mr. E. H. Bloch: No, I am waiving all of that.

Mr. Saypol: I have asked for the stipulation in order to dispense with the necessity for laying the foundation.

The Court: O. K.

Mr. Saypol: May I read a portion to the jury?

The Court: Yes.

Mr. Saypol: As the jury will see this is from the official records of the Albuquerque National Bank, Account No. 35169; name, Ruth Greenglass, whose signature is affixed,

whose address is given as 209 North High Street. It is stated that she works for the OPA, her husband in the Army. It is for the Albuquerque National Trust & Savings Bank, Albuquerque, New Mexico, and contains the first [fol. 1269] entry dated June 4, 1945, deposit, $400., balance $400., and attached to it is a credit slip for the deposit.

CANDLER COBB, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Colonel Cobb, what is your occupation?

A. I am the New York City Direct- of Selective Service.

Q. How long have you held that office?

A. Since January 1946, and under three different laws. As the laws expired then they were extended.

Q. That is, the laws that you refer to are the laws with relation to the administration of the draft or Selective Service?

A. In World War II the law was the law of 1940. It is now the law of 1948.

Q. And just for collateral comment I think you were once an Assistant United States Attorney, weren't you?

A. Yes, sir, under Judge Caffey.

Q. As the director of Selective Service *as* you the lawful custodian of the records of that system?

A. Yes, sir.

Q. Those records of course are maintained by your staff [fol. 1270] under your supervision?

A. That is right.

Q. Pursuant to subpoena duces tecum served upon you have you produced here the Selective Service file of one Morton Sobell?

A. Yes, sir.

Q. Do you have it with you?

A. I have the original here of the entire file, to which is clipped the original registration card.

Q. That file that you have produced contains all of the Selective Service records relating to this Morton Sobell, is that correct?

A. Yes, sir.

Q. At my request, Colonel, have you caused to be prepared a photostatic copy of the entire contents of that file?

A. That is right.

Mr. Saypol: I should like to offer that file in evidence and if there is no objection to substitute for the original in evidence a photostatic copy.

Mr. Phillips: Certainly, there is a serious objection. No foundation has been laid. There is no testimony of any kind to show that this in any way relates to the issues we are trying.

The Court: Is that the only objection, relevancy?

Mr. Phillips: It is incompetent and there is no foundation laid for this testimony.

[fol. 1271] The Court: Are you objecting to the basis of the foundation for the testimony?

Mr. Phillips: Yes.

The Court: You are not objecting to the substitution of photostatic copies for originals?

Mr. Phillips: No.

The Court: If I find it otherwise proper.

Mr. Phillips: No. I am assuming the photostats are like the originals.

The Court: I dare say at this point that I don't see the relevancy of it.

Mr. Saypol: The relevancy will come later, if the Court please. As an official record I had not anticipated that there would be any objection made. May I ask perhaps if the objection is that the file has not been linked with Mr. Phillips' client, the defendant Sobell? If so——

The Court: That is the objection.

Mr. Saypol: —I will pursue some additional inquiry.

The Court: No, no. He admits that it is the file of Morton Sobell, but as I understand it Mr. Phillips says he doesn't see its relevancy in this case.

Mr. Saypol: The relevancy will appear later. If there is no——

[fol. 1272] Mr. Phillips: I object to any introduction of

testimony, the relevancy of which will appear later. We have been doing that all during the trial and I have lost a lot of tracks which I have to later get together.

The Court: As I have said the Government can't prove its entire case from one witness or two witnesses.

Mr. Phillips: I agree.

The Court: But the entire case has to be put in and then dovetailed.

Mr. Saypol: May I ask a few additional questions of the witness?

[fol. 1273] *Mr. Saypol: May I ask a few additional questions of the witness?*

The Court: Go ahead.

Q. Colonel Cobb, from the file you have before you, what is the spelling of the name of the registrant?

Mr. Phillips: Just a minute. I didn't hear that question. Do you mind repeating it?

Mr. Saypol: I say, I want the full spelling of the first and last name of the registrant.

Mr. Phillips: How is that relevant, if your Honor please? I object to it.

The Court: I overrule it.

Mr. Phillips: Exception.

Frankly, I haven't seen what these files contain, and my objections are based purely on general questions of law, if your Honor pleases.

The Court: I don't know what that means.

Mr. Phillips: Well, it means I don't know whether those files are in any wise detrimental to the defendants or otherwise, but I think they are improper at this time.

The Court: I assume the Government wouldn't introduce it unless they intended it to be detrimental to the defendants.

[fol. 1274] Mr. Phillips: Unless they think so.

The Court: I say, unless they intended it to be.

Go ahead, you may answer the question.

Q. Go ahead, Colonel Cobb.

A. The questionnaire, the first name is "M-o-r-t-o-n" and the last name is "S-o-b-e-l-l." At the end of the questionnaire is a signature, spelled the same way, sworn to before a Notary, under a seal, notarial seal.

Mr. Kuntz: If your Honor please, we would have been very happy to concede the spelling, if that is what Mr. Saypol was trying to get at.

The Court: Well, he didn't think you would be happy to concede it, from Mr. Phillips' statements. If you would have been happy to concede it, you should have gotten up and conceded it.

Mr. Kuntz: Up to this point we were completely in the dark as to what Mr. Saypol's intention was from these records. If it is the name, we are ready to concede.

The Court: Wait a minute. Mr. Saypol, do you want to tell counsel privately what is the relevancy of these? Maybe they will agree on it.

Mr. Saypol: Not at this stage.

Mr. Phillips: Perhaps if they will show us the file —

[fol. 1275] Mr. Saypol: I would rather have them proceed, as they seem to indicate, adhering strictly to the rule, and I shall make my case.

Now, the first thing I shall do is ask that this photostatic copy of the file be marked for identification.

(Marked Government's Exhibit 18 for identification.)

Mr. Saypol: That I am sure counsel can't object to.

Q. Now, Colonel Cobb, refer to the questionnaire, about which you just told us——

Mr. Saypol: May that be marked for identification, perhaps, as 18-A, since the whole file is 18 for identification. Would you be good enough to mark that?

(Marked Government's Exhibit 18-A for identification.)

Q. Now, Colonel, the card on the face of the cover sheet.

A. Well, that is attached to the cover sheet for convenience. It is usually kept in a separate file.

Mr. Saypol: Mr. Schaeffer, would you mark that 18-B for identification?

(Marked Government's Exhibit 18-B for identification.)

Q. Now, Colonel, will you refer to the questionnaire, [fol. 1276] 18-A for identification, at page 11—I think it is printed page 7.

A. I have it.

Q. Do you find at the foot of page 7 the registrant's affidavit, together with his signature, "Morton Sobell"?

A. There is a statement, notarial statement, "District of Columbia, Washington, D. C.

"I, Morton Sobell,"—

then a signature and a notarial signature and a notarial seal, dated the 2nd of April 1941.

Q. Do you find any other place in the questionnaire to which is affixed the signature of Morton Sobell? That is the only place in the questionnaire?

A. That is the only place in this.

Q. Will you refer to Exhibit 18-B for identification. That is the card on the cover sheet. Do you find there at the foot the registrant's signature, "Morton Sobell"?

A. I do.

Mr. Saypol: Will counsel concede that that is the signature of their client, Morton Sobell, on 18-B and on 18-A for identification (showing)?

Mr. Kuntz: Yes, no question about that.

Mr. Saypol: Just bear with me for a moment, your Honor.

Q. Colonel, will you be good enough to look in the file, the [fol. 1277] original, and segregate various letters of which I show you photostats (handing).

(Witness complies.)

Mr. Saypol: Mr. Schaeffer, will you be good enough to mark these for identification?

(Marked Government's Exhibits 18-C, D, E and F for identification.)

Mr. Saypol: May I——

The Court: Are those letters?

Mr. Saypol: I beg your pardon?

The Court: Did you characterize them as letters?

Mr. Saypol: Communications, letters.

And while the clerk is marking those, if I may, I will show some others to Colonel Cobb and ask him to compare them with the originals and tell me if the file contains the

originals of the photostats which I show him (handing to witness).

(The witness examines file.)

Mr. Saypol: Mr. Schaeffer, will you likewise mark these seratim.

(Marked Government's Exhibits 18-G, H I and J for identification.)

Mr. Saypol: Meanwhile I shall ask the defendant Sobell for a concession that these various exhibits for identifica-
[fol. 1278] tion, C, D, E and F, are those of Sobell and in his handwriting (handing to Mr. Phillips).

Mr. Kuntz: Maybe we can save time here. If the purpose is to prove Sobell's signature we will be very happy to have Sobell write out his name now or anything else that Mr. Saypol wants. I do not know the purpose of this.

Mr. Saypol: The trouble is that Mr. Kuntz gets happy too late.

The Court: Well, I do not know the purpose of it either. Right now all he is asking for is a concession that that is his signature.

Mr. Kuntz: Well, the only way I can tell that is by consulting Sobell.

If Mr. Saypol had only asked us he would have got these concessions as he is getting now after some time.

(Mr. Kuntz confers with defendant Sobell off the record.)

Mr. Kuntz: No question as to his signature.

Mr. Saypol: How about the writing on the letters, Mr. Kuntz?

Mr. Kuntz: Sir?

Mr. Saypol: How about the writing on the balance of the letter? You conceded that the signature is your client's.
[fol. 1279] Mr. Kuntz: I am sorry, I did not ask Sobell about that. I would assume that it is but I will ask him.

(Mr. Kuntz confers with defendant Sobell off the record.)

Mr. Kuntz: He says they are all written in his hand, the originals of these photostats were written in his hand.

Mr. Saypol: Then we have the concession on the record. May we have the same concession as to G to J inclusive (handing to Mr. Kuntz)?

(Mr. Kuntz confers with defendant Sobell off the record.)

Mr. Kuntz: You may have that concession.
Mr. Saypol: Colonel, that is all, and thank you.

(Witness starts to leave the witness stand.)

The Court: Just a moment.
Any cross?
Mr. Kuntz: No cross.
The Court: Very well.

(Witness excused.)

The Clerk: Colonel John Lansdale, Jr.

[fol. 1280] JOHN LANSDALE, JR., a witness called in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Colonel, I take it you can speak up loudly so that we can all hear your testimony.
A. Yes, sir.

Q. Will you please try to dispel the common illusion about lawyers as witnesses. They say they make the worst. You try to be the best.
What is your education, Colonel?
A. I graduated from Virginia Military Institute in 1933 and from the Harvard Law School in 1936.

Q. You are a member of the bar, are you not?
A. Yes, sir.

Q. What did you do after you graduated from law school?
A. I went to Cleveland with a firm, Squire, Sanders & Dempsey.

Q. Did there come a time when you joined the United States Army?

A. Yes, sir.

Q. When was that?

A. In the latter part of May 1941 I was called to active duty as first lieutenant.

Q. What branch of the service were you assigned to?

A. I went on duty with the Military Intelligence Division, War Department, General Staff.

Q. That is what we commonly call G2, isn't it?

[fol. 1281] A. Yes.

Q. How long from 1941 did you remain in that branch of the service, that is, the Intelligence branch?

A. With the General Staff until January 1, 1944.

Q. And then what happened?

A. Then I was transferred to the Manhattan Engineering District Corps of Engineers.

Q. What did this Manhattan Engineering District deal with, what was its function?

A. The function of the Manhattan Engineering District was to produce an atomic bomb.

Q. And when did you first learn about that, that is, the object of the project?

A. In the latter part of December 1941 was my first knowledge of an atomic bomb project.

Q. Tell us how that knowledge came to you?

A. I was sent by my then chief, Major General Lee to see Dr. Conant, then Chairman of the National Defense Research Committee.

Q. C o n a n t?

A. That is right, and president of Harvard University, who was responsible for the research then going on looking toward the production of an atomic bomb, and he gave me an outline of the project and the specific assignment concerning it.

[fol. 1282] Q. So that by June or July 1942 you were directly concerned with that project?

A. That is correct, and it was—the assignment I got from Dr. Conant was a brief one and then in June or July of 1942, by which time the Manhattan District had been formed and the Army had taken over, General Groves asked me to be responsible for the security of the project.

Q. Well, what was encompassed in the assignment that you received from General Groves in regard to protecting the security of the project?

A. My assignment was while remaining as a member of the general staff organization to be responsible for all phases of the security of the atom bomb project; in particular to formulate policy, to conduct such investigations as were necessary to conduct and to procure personnel for direct assignment to the project to deal with security. I should state that General Groves was never one to give detailed instructions. He gave general responsibility and then expected to have it carried out under the initiative of the person he gave it to.

Q. I take it with that assignment you had a two-fold objective; the maintaining and protecting of security, a local one and a foreign one, isn't that so?

A. Yes.

[fol. 1283] Q. Will you explain that?

A. Of course, we were concerned to keep the existence of the project as well as the nature of it secret from all foreign powers, and I do mean all. Secondly, we were concerned to keep it secret within the United States from our own people and from the other branches of the service and divisions of the Government.

Q. Of course, the public, too?

A. Yes, sir.

Q. Now when you say you were required to keep it secret from other branches of the Government, what was done about the official designation of your assignment? Was that promulgated officially or was your assignment categorized or described in some way to conceal the fact that you were actually working on this?

A. As far as I know, there was never anything in writing on the subject until much later.

Q. It wasn't known other than secretly that you were in G-2?

A. That is right. As a matter of fact, in G-2, the only persons who at least officially knew about it was the assistant chief of staff of G-2.

(Mr. Saypol and Mr. E. H. Bloch conferred.)

Q. Now, you said a moment ago that one of the objectives was to keep this secret from foreign powers. As far as was known by you at that time or those associated with you was this matter, this whole subject an original [fol. 1284] one, or was it a subject within the knowledge of any foreign power?

Mr. Phillips: Oh, I object to that. How could he know what other people knew?

The Court: I will sustain the objection.

Q. Initially, did any foreign power participate in the project?

A. Not initially, no, sir.

Q. Did there come a time and, if so, tell me approximately when, when some foreign countries did cooperate in the project?

A. Great Britain and Canada later cooperated, and my recollection is that it started following the Quebec conference. I am a bit hazy in my recollection of that exact ders he gave. He wasn't the head of that project.

Q. In connection with the performance of your duties at this point, did you do anything or did you give any instructions or execute any orders in so far as the German military was concerned?

Mr. Phillips: I object to that as immaterial—what orders he gave. He wasn't the head of the that project.

The Court: Well, on that ground I will overrule it, but I take it you are attempting to ascertain the degree of secrecy or secrecy generally on this project—is that right?

Mr. Saypol: And I am trying also to bring out what this [fol. 1285] witness did to effectuate the official——

The Court: Effectuate security?

Mr. Saypol: Yes, sir.

Mr. Phillips: What he did to follow other people's orders may be all right, but the orders he gave are not official and not proven to be authoritative.

The Court: Oh, no, I don't agree with you at all. The mere fact that he had a superior, he has already testified, who gave him authority to devise a method of security, and as he says, General Groves was one who would merely

give you general responsibility and leave it to you to work out the details.

Mr. E. H. Bloch: If the Court please, I have no objection to any of the questions that have been propounded to the witness, but I was wondering in view of the questions that have already been asked whether or not this testimony is merely cumulative because we have in evidence Government's Exhibit 1. There is no dispute that the Los Alamos project was a restricted and secret project and we have the injunctions laid down for the various employees working around that project.

The Court: And also——

Mr. E. H. Bloch: And I can tell the Court I do not intend to dispute——

The Court: —secrecy.

[fol. 1286] Mr. E. H. Bloch: The secrecy of the project. Anything connected with Los Alamos was secret and restricted, even the names of the persons who were working there. I just inquire at this time as to whether we can save time, if the purpose of this witness's testimony is to reinforce that approach or that kind of evidence. I might say that I am willing to make a concession right here and now.

The Court: I think with that concession, Mr. Saypol, that the matter turned over, or the matter which the Government contends was turned over, if turned over, was of a secret nature; then I dare say that that phase of the case is supplied.

Mr. Saypol: And would have been and was of advantage to a foreign government.

Mr. E. H. Bloch: Well, of course, I can't concede, that, Mr. Saypol, because I just don't know.

The Court: Well, that is an element of the proof.

Mr. E. H. Bloch: I think it is, and if the purpose of Mr. Saypol is to elicit that kind of testimony from the witness then I certainly want to sit down. I don't want to stop Mr. Saypol from doing it.

Mr. Saypol: And what is more, I recall that only a day or two ago when testimony of this kind was brought out from [fol. 1287] other witnesses there was vigorous objection on the part of the defendant Sobell. So I have to prove my

case. At least I have to do it adequately as I think it necessary.

Would you be good enough, Mr. Reporter, to read the question to which there was objection?

(Question read as follows:)

"Q. In connection with the performance of your duties at this point, did you do anything or did you give any instructions or execute any orders in so far as the German military was concerned?"

[fol. 1288] Mr. E. H. Bloch: Now, if the Court please, I object to that upon the ground that it is not related to the issues in this case. If it is the purpose of this question to elicit from this witness proof that this might be of advantage to a foreign power, I will withdraw my objection, but in the form in which it is propounded, I don't quite see it. I am trying to project my mind backwards to this particular time.

The Court: Is the purpose of this question intended to show an advantage to a foreign power?

Mr. Saypol: Indeed.

A. Yes, sir. We did this. We believed that the Germans were working on the atomic bomb and were far in advance of our efforts. We believed also that should information as to our having undertaken in any major way work on an atomic bomb, if this were to leak out to the Germans, it would result in a redoubling of their efforts, as well as efforts on their part to ascertain what we were doing, and might well in and of itself defeat our objective. Therefore, our security, initially, was directed with that thing in mind, and one of the primary things that we undertook then to attempt to keep secure the concentration in any one location of a number of prominent scientists who were engaged in this research, and the purpose of that was this, that the [fol. 1289] identity of those scientists who could do advanced work on nuclear fission or the production of the atomic bomb were generally known throughout the world, and the concentration or location of them in any one place would have given considerable information to anyone. Indeed, that was the way in which we ascertained, as time

went on, the extent and nature of the German effort on the atomic bomb.

Q. In other words, you knew the identity of the scientist and you knew what he was working on?

A. That's right.

Q. That is, those versed in the science could readily use that as a means of detection?

A. That's right.

Q. So that for that purpose, I take it, one of the efforts was to keep the identity of the scientists a secret?

A. That's right. The identity of them, as together with one location, with one or two exceptions, where the individual identity was important.

Q. I take it that you first came to Los Alamos in connection with the Project sometime in 1943; is that so?

A. Yes, sir; that is my recollection.

Q. At that time, what was the state or progress in the construction of the Project?

A. It was then beginning. My recollection is that we [1290] started construction up there early in 1943 and we first started work—when we first started work out there, much of the work and the offices were down in the City of Santa Fe. Then by summertime the initial construction We called it then and throughout the Project "Site Y". had been completed and work was going on at the site. We called it then and throughout the Project "Site Y".

The Court: What did you call it?

The Witness: "Site Y."

Mr. Saypol: "Site Y."

Q. I think the Project was likewise known as "Project Y," wasn't it?

A. Yes.

Q. That is, Los Alamos, as a physical locality, was known as "Site Y" and the work going on there was known as "Project Y"?

A. That's right; Los Alamos was the name of the boy's school that had operated the site and had operated there, but we never used that name.

Q. How large was the reservation?

A. My recollection is, it was quite large, around 50,000 acres.

Q. Now, I think you were there until sometime in the fall of 1945, were you not?

A. I was not at Site Y; I was with the Project until then.

Q. Will you tell us something about the security regulations which were effectuated under your supervision?

Mr. E. H. Bloch: Well now, if the Court please, I think this is cumulative, although that is not a perfect legal [fol. 1291] objection, but I rise to save time.

Mr. Saypol: If I may, I prefer to put it in from one who in a real sense is a corroborative witness and who gave the directions and saw them enforced and can give them in more vivid detail and more realistic detail than the witnesses who have testified.

Mr. E. H. Bloch: May I have a voir dire question on this, your Honor, just one?

The Court: Just a moment.

You see, the question of whether it was secret and whether it was intended to be of advantage to a foreign nation so closely interwoven with one another that it is difficult in some places to separate them. For example, this testimony that was just given, concerning the names of scientists that were working on the Project, now, that was secret and it would appear that he was merely repeating that that was secret. But actually, as the testimony unfolded, it appeared that that would be an advantage to a foreign nation if it were known, for the reasons that he stated. So it is hard to close it off because it is secret and because you have already conceded that it is secret, because it might also prove this other element, which you are not conceding.

Mr. E. H. Bloch: If the Court feels that way, I don't want to object. I just rose to save time.

[fol. 1292] The Court: All right, and I am in favor of that wherever possible. You know that.

All right.

The Witness: May I have the question?

Mr. Saypol: Yes.

Mr. Reporter, will you be good enough to find the last question, as to which there was objection, and reread it?

(Question read.)

A. Are you referring to the entire Project, or to Site Y?

Q. Let's start with the entire project. Was there special military police detachment included?

A. You mean, the Site Y Project, Los Alamos?

Q. Yes.

A. Well, first, administratively, Site Y was segregated from the rest of the district so that its control and direction was from General Groves' office rather than through the organization of the Manhattan district itself, of which, administratively, both, from an administrative standpoint and the security standpoint, were handled by the district organization. That was primarily for security purposes.

Secondly, since Site Y was our most and important Project, we took extraordinary measures for its security. That began with the selection of the site itself. The reason [fol. 1293] for going out on this lonely mesa, in the wastes of New Mexico, was because it was isolated, because there was only one—there were only one or two means of access to it. The first thing we did was to recruit an especially selected military police detachment, whose sole job was the physical guarding of the place. We established very strict regulations as to entrance to it and exit from it. We established separate areas within the Project itself. The most important one of which, or one of the most important ones of which was the area enclosed in a high wire fence, called the "Technical Area", which was separately patrolled and guarded from the rest of the Project. We established censorship of mail. We established censorship of telephone conversation. We placed undercover agents in all of the surrounding towns. We placed restrictions upon the movements of the people that was there, in their social intercourse. We tried to be extremely careful in the selection of personnel that went there, although as the pressure of time, as time went on and the pressure of speed became greater, these things tendered to be—the care of the selection of personnel tendered to be relaxed somewhat; and most important of all was the continual attempts to indoctrinate the personnel themselves, because [fol. 1294] after all, the only real security lies in the discretion of the people who have the information.

Q. With respect to the Technical Area, what external precautions were taken to protect secrecy?

A. Well, the most obvious one was the selection and identification of personnel who were admitted to the Technical Area and to various portions of the Technical Area. The Technical Area itself was divided into areas. We had a badge system, whereby persons who could enter various portions of the Project were designated. In addition, we had, of course, guards at the gates and patrols around the outside.

Q. When you say "guards at the gates," were any special fences erected around those technical areas?

A. Yes, there was a high wire fence around that entire area and that fence was patrolled at all times.

Q. With but a single means of entrance and exit?

A. That is correct.

Q. With respect to personnel, particularly those in the technical areas or in the Technical Area, was any effort made to bring home the importance of the fact of maintaining secrecy?

A. Every effort we could, sir. Every person, both civilian and military, who went, who was admitted to the Technical Area, either temporarily or for the duration of the Project, [fol. 1294a] was interviewed before hand. They were given a small condensed directive of rules of security. They were talked to at every opportunity, both by security personnel and by their own superiors. In short, we made every attempt that we could to indoctrinate these people and continually impress upon them the absolute necessity for security.

[fol. 1295] Q. Was the actual work and development, both experimentally and any other type, compartmented? Did you ever hear that word?

A. Yes, sir.

Q. What is that? How was that applied there?

A. Well, what we call compartmentalization was one of the basic security policies adopted. That, in brief, was this: that no one should know any more than he absolutely had to know to do his own job, and we attempted to set up the project an dindividual parts of the project in cells or compartments, with one compartment not knowing what the other one was doing, to the extent that we were able to segregate them, and each person was particularly impressed with the necessity of being secure even with re-

spect to those whom he knew to be working on the project and working on a highly secret phase of it.

For example, one of the most obvious things was that only the people in the upper levels of the project were actually told what they were working on. There is no question but that a lot of very intelligent scientists deduced the object of the project but they were never told, and one of the parts of indoctrination was to caution people against speculation or expressing ideas as to what they may deduce as to the object of the project or the particular thing [fol. 1296] upon which they were working.

Q. Now when you talk about this effort to segregate activities of individuals or groups into compartments, would it be an apt illustration to say that the object was in development to keep the right hand from knowing what the left hand was doing?

A. Precisely.

Q. It comes down to that, is that right?

A. Yes, sir.

Q. Now did it go so far—I will withdraw that.

Q. As an illustration of the keen determination to keep this secret, can you tell us whether the phrase "atomic bomb" was used in correspondence?

A. Never to my knowledge.

Q. Or in memoranda?

A. Never, and instructions were that it was not to be used—instructions to those people who knew what we were working on were that it should never be used—that or a number of other revealing words or phrases, such as nuclear fission.

Q. In the official intercourse connected with this development, it is the fact, isn't it, that the President of the United States maintained a direct contact with all phases?

A. Yes, sir.

Q. You know that as liaison officer of General Groves?

A. Yes, sir.

Q. Well, what was the practice in correspondence with [fol. 1297] the President in regard to the description of the project or the bomb itself?

A. These words were seldom, if ever, used. In no report to the President which I saw, and I saw most of them were these words ever used. Indeed, the President had

personally directed that this project was the one with the highest order of secrecy of any project which the Government had undertaken.

Q. How long did that practice continue?

A. Until the dropping of the bomb on Hiroshima on August 6th, 1945.

Q. Now let us go back for a moment, if we may, to the matter of the identity of the scientists who worked on the development of the bomb, both before and after Hiroshima. What was your policy in regard to the identity of scientists?

A. We attempted, in so far as that was practical, to keep their identity secret, particularly their—particularly two things: No. 1, their concentration in any one location, and, No. 2, the connection of one or two very prominent internationally recognized scientists, such as Neils Bohr, with the project.

Q. Well, what did you do about identifying them?

A. We used fictitious names, particularly when they were traveling. Neils Bohr, for instance, was given the name [fol. 1298] Nicholas Baker. We soon found it impractical to use names which did not have their own initials.

Q. At that time, engaged in the Intelligence work which you told us about, did you give any attention to the identity of foreign scientists, to ascertain the activity of foreign governments in respect to this subject?

A. Yes, sir. As I stated, that was the primary lead to the determination of what the Germans were doing, and we did find out precisely what they were doing, primarily through that means.

Q. In other words, you found out who were working on it in Germany, you found out where they were working on it?

A. No, sir. We took the list of scientists who were known to have the capacity to do work of this kind, ascertained where they were, and ascertained their travels and the locations in which they habitually worked.

Q. And so you learned that foreign governments were very much interested in this subject and were working on it?

A. Yes.

Q. Did that apply to the Russian Government, too?

A. We never had any knowledge that the Russians were working on it. However, I should state that——

Mr. E. H. Bloch: If the Court please, I think the answer is complete and I think with the best intention of the wit-
[fol. 1299] ness he may state somthing which——

The Court: All right. You have no objection thus far as he has gone?

Mr. E. H. Bloch: No, I have not.

The Court: The answer stands as is.

Mr. Saypol: I beg your pardon?

The Court: The answer stands.

Mr. Saypol: I should like to know what they did find out, as a result of which he took official action.

The Court: All right.

Mr. E. H. Bloch: The reason I rose at the time I did, your Honor, is because this witness stated that he did not know of his own knowledge what they did.

The Court: He was about to tell us what he did find out, though.

Mr. E. H. Bloch: In the course of his official duties?

The Court: That is right.

A. (Continuing) We did ascertain, however, that the Russians were much interested in what we were doing.

Q. Now coming back——

Mr. Kuntz: I move to strike that out, your Honor, as not responsive.

The Court: No, I will let it stand.

Q. At that time what official knowledge did you have
[fol. 1300] concerning the identity and background of Neils Bohr?

A. Neils Bohr was a Danish scientist whom I can best describe as being the pioneer and granddaddy, you might say, of nuclear physics. He had an international reputation in the field in which the project was interested.

Q. In connection with his activity—I will withdraw that.

Q. There did come a time when he arrived at Los Alamos and participated in the research connected with the development of the atomic bomb, is that right?

A. Yes, sir. He went to Los Alamos as a consultant.

Q. In connection with the maintenance of secrecy of his identity and activities, what steps were taken in the course of his arrival ultimately at Los Alamos?

A. Two primary steps were taken, or three: One was, while he was still in England, he was given a fictitious name to be used in every instance in which it was necessary to communicate concerning his connection with our project.

Secondly, he was given a covering purpose for visiting this country which, as I recall it, was the Rockefeller Foundation.

Thirdly, those on our project who knew him by sight were, so far as we could ascertain them, strictly enjoined [fol. 1301] not to mention or disclose in any way his connection with the project. He was so well known for his work on nuclear fission and so important a figure in that field that we believed that disclosure of his visit to Site Y, which was his primary purpose for coming to this country, would be a dead give-away.

Q. Ultimately he came to Los Alamos, and I understand a pseudonym, a fictitious name, was given to him?

A. That is right; Nicholas Baker.

Q. Were such directives issued under your authority?

A. Yes.

Q. By your subordinates?

A. I directed the District Intelligence Officer, who at that time was Captain or Major Calvert to issue a secret directive to his principal Intelligence officers to that effect and also conferred with J. Robert Oppenheimer, the Director of Site Y, and asked him to caution all of his personnel themselves who knew Neils Bohr, to that effect.

Mr. Saypol: Would you mark this, please, Mr. Schaefer.

(Marked Government's Exhibit 19 for identification.)

Q. I show you Government's Exhibit 19 for identification and ask you if you recognize it, Colonel (handing)?

A. Yes, sir. That is the Directive of the District Intelli- [fol. 1302] gence Officer to which I referred, and it was written in my presence at Oak Ridge.

Mr. Saypol: I offer it in evidence.

Mr. E. H. Bloch: No objection.

(Government's Exhibit 19 for identification received in evidence.)

The Court: Are you going to read that?

Mr. Saypol: I will hand it to the jury, if I may, and the jury will examine it.
The Court: All right.

Q. That, I take it, Colonel, is a duplicate original of the Directive as it was issued?
A. Yes.
Q. That is, referring to Government's Exhibit 19 in evidence.
A. That is right. The green copy was the retained duplicate original.
Q. That is the filed copy?
A. Yes.

Mr. Saypol: May I exhibit it?
The Court: All right. I thought you were going to read it to them.
Mr. Saypol: All right, I will read it, then.

(To jury) Exhibit 19 is stamped "Secret" on top and bottom and is dated the 4th of February, 1944 (reads to jury).

And then written on are several names and places to which this Directive is ordered.

[fol. 1303] (Mr. Saypol hands exhibit to the jury.)

Q. From time to time were written security regulations issued?
A. Yes, sir, particularly relating to the security administration, you might say.

Mr. Saypol: Would you mark that, please, Mr. Schaefer.

(Marked Government's Exhibit 20 for identification.)

Q. Colonel, I show you Government's Exhibit 20 for identification and ask you whether these regulations were promulgated under your supervision (handing)?
A. Yes, sir. I have previously examined this and this is a copy of the general security regulations written and revised by the District Intelligence Officer at Oak Ridge and specifically approved by me prior to their issuance.
[fol. 1304] Q. May I have that for a moment?
A. (The witness hands to Mr. Saypol.)

Q. To whom did you say these regulations were directed?

A. They were disseminated generally to project personnel.

Mr. Saypol: I offer this in evidence.

Mr. E. H. Bloch: No objection so far as the defendants Rosenberg are concerned.

Mr. Kuntz: No objection.

(Marked Government's Exhibit 20.)

Mr. Saypol: Does the Court desire to examine this before I read it to the jury? I would like to read excerpts to the jury, if I may.

The Court: Do you want to do that now or take a recess at this point?

Mr. Saypol: Whatever the Court's pleasure is.

The Court: Will the reading be very lengthy?

Mr. Saypol: It may take a few minutes. Perhaps the jury may want to recess now.

The Court: We will take our morning recess at this point, ladies and gentlemen.

(Short recess.)

By Mr. Saypol:

Q. Colonel Lansdale, I think you told us about Exhibit 20 as the over-all regulations document at the proj- [fol. 1305] ect?

A. Yes.

Q. Now there is in evidence here Government's Exhibit 1 which likewise contains information relating to security, and I take it that its contents are a projection of this over all document? Is that correct?

A. Yes, with specific application to Site Y, or Los Alamos.

Mr. Saypol: If I may now, I will read a few portions of this exhibit, Government's Exhibit 20.

Ladies and gentlemen, Government's Exhibit 20 is marked "restricted" at the top and bottom and it is entitled "Safeguarding military information regulations". It is dated the 27th of November 1943, revised the 1st of September 1944. It bears the title "Intelligence Bulletin No. 5, Manhattan Engineer District".

(Mr. Saypol read from pages 1, 2, 3, 4, 5, 9, 14 and 16 of Government's Exhibit 20.)

Q. Colonel, when did you sever your connection with the Manhattan District project?

A. I went on terminal leave November 15, I believe, 1945, and at that time severed my connection with the project except for a period of time as a civilian consultant.

Q. Reverting to the time when you were officially assigned to the project, do you recall experimentation in connection with a high explosive lens?

[fol. 1306] A. Yes, sir, I do.

Q. Do you recall that that experimentation was conducted under the supervision of Dr. Koski?

A. Yes. Dr. Koski was a subordinate, as I recall, of Dr. Kistiakowski, under whose general direction the work was.

Q. When you say he was a subordinate to Dr. Kistiakowski, you don't mean he was a subordinate employee; rather, he was a top scientist there.

A. Oh, yes.

Q. You mean that in point of rank he was next to Kistiakowski?

A. That is right.

Q. In the flight of the upper level?

A. Yes.

Q. Was the experimentation pertaining to the high explosive lens classified as secret?

A. Oh, yes, sir, top secret.

Q. And what was the situation from the security standpoint with respect to the general layout of the buildings comprising the project? Was that likewise secret?

A. Yes. The people were instructed that no information relating to the specific location of buildings or general layout and so on should be disclosed. That was a rather elementary precaution from a sabotage standpoint. Likewise, for similar reasons we made that area restricted to aircraft; no aircraft was permitted to fly over.

Q. No aircraft was permitted to fly over Los Alamos [fol. 1307] Reservation or the technical area? Which was it?

A. The Los Alamos Reservation. That was marked on all air maps as a military area, forbidden to aircraft.

Q. What was the situation with respect to the general description or any kind of description pertaining to the atomic bomb from the security standpoint?

A. Oh, that was all definitely very secret.

Q. You have told us of the precautions which were taken under your supervision to maintain the secrecy of the experiments of the bomb, of the scientists who were connected with its development. In the effectuation of those policies under your supervision, did you take into consideration the likelihood of advantage to a foreign power?

A. Yes, that was our primary consideration.

Q. That is, you considered that that information would be sought and would be advantageous by a foreign power.

A. We so considered.

Mr. E. H. Bloch: Just a minute. I object to the form of the question, one, on the ground that it has already been answered, and upon the additional ground that it is improper in form. There is something in the question which struck my ear about the impropriety of the form. I wonder whether the stenographer can re-read the question so that I can state my second ground.

[fol. 1308] The Court: Just hold it a minute.

All right, read the question.

(Question read.)

Mr. E. H. Bloch: Well, now, I clarified my thoughts on my second objection. I submit, your Honor, that Colonel Lansdale has not been qualified as an expert, as to whether or not this information would be advantageous to a foreign power, except in so far as he, in the course of his official duties, considered or was instructed that this information would be advantageous.

The Court: Well, let's find out whether he was in his official duty.

Mr. E. H. Bloch: I don't want to appear technical here, your Honor.

The Court: No, of course not.

A. Well, I can clear that up.

Mr. Saypol: Just to make the record clear, I don't want this evidence this knowledge from Colonel Lansdale, on the basis of his qualifications of a lawyer. I want them on

the basis of the fact that he was officially charged with the responsibility for maintaining this security.

Mr. E. H. Bloch: On that ground, I have no objection.

Q. Mind you, I don't mean your qualifications as a law-
[fol. 1309] yer, Colonel Lansdale.

A. I can, I think, state my knowledge and my beliefs in that regard. No. 1, I believe, and No. 2, it was the expressed opinion of the chief of staff of the Army that this weapon, should we be able to develop it, would be decisive of this war and decisive on the question of the future security of this country.

Q. And that mainly was the basis for keeping it, doing everything possible to keep it away from any foreign country, any foreign nation?

A. Yes.

Mr. Saypol: You may examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. Colonel Lansdale, just a few questions. In the course of your official duties as one of the top security officers or in military Intelligence, did you come to hear about or know about an employee of the Los Alamos project, known as Dr. Klaus Fuchs?

A. No, sir; at the time I have no present recollection of having known him.

Q. Well, now, now knowing from what you have read, can you project your memory backwards and tell us whether or not it isn't the fact that there was a Dr. Klaus Fuchs working on that project?

Mr. Saypol: I think counsel and the witness are confused. I think the witness thinks that counsel is asking
[fol. 1310] whether he knew Klaus Fuchs, not whether he knew about him.

Mr. E. H. Bloch: All right, I will reframe the question.

A. Oh, yes. Well, I can answer definitely. I knew about him. We got periodic lists from the British of their people and he was without question one of them.

Q. And he was a scientist, was he not, who was assigned to work on the Los Alamos project, upon instructions or authorization from the British Government?

A. Yes, sir; he was a member of the British group at Site Y.

Q. At Site Y.

A. Yes.

Q. That is, at Los Alamos project?

A. Yes.

Q. Now could you tell us whether Dr. Klaus Fuchs was assigned in discharging his duties there to the technical area?

A. Yes, sir.

Q. Have you any independent recollection of when Dr. Klaus Fuchs came to Site Y or the Los Alamos project?

A. No, sir, I do not.

Q. Well, would it refresh your recollection if we specifically talked about the year 1944? Do you know whether he was there in 1944?

A. All I could do would be to speculate. There was considerable activity during that year and it would be sheer speculation.

[fol. 1311] Q. Now, isn't it an accurate statement that the most stringent security regulations were set up by the government of the United States with respect to the Los Alamos project?

A. I can answer that yes, but I would like to make one qualification, if I may.

Q. Any qualification you want.

A. We were required to accept the British scientists upon the representation of the British Government that they were cleared, investigated.

Q. But apart from that, I am talking now about the control of the United States Government over this project. Is it not a fact that every possible precaution was set up by the United States Government to insure the secrecy of the Los Alamos project?

A. Every one that we could think of, always balancing the necessity for speed.

Q. And, in connection with the implementation of that perspective and that policy, there were certain regula-

tions, such as Government's Exhibit 1, and the last exhibit, I think, which you identified—I don't know its number——

The Court: No. 20.

Q. No. 20. No. 20, isn't that correct?

A. If they are those security regulations, that is correct.

[fol. 1312] Q. Now, in implementing these regulations, is it not a fact that every employee who worked in the technical area had his mail censored?

A. That is not quite a correct statement. It was taken on a percentage basis. A certain percent of all mail was censored. All mail of all persons about whom we had any suspicion was censored, but except at the very beginning of the project—at the beginning of the project we censored all mail. As the project went on, we did it on a percentage basis, I have forgotten just what percent it was.

Q. Sort of a spot-check?

A. That is right

Q. Now, Colonel, I would like to direct your attention to the period between August '44 and the latter part of November 1944, and ask you whether or not at that time there was censorship of the mail of the employees working in the technical area, whether in terms of complete censorship, or censorship, or spot-check censorship, or whatever the fact may be?

A. Yes, sir; that is my recollection.

[fol. 1313] Now, what would you say (that there was a complete censorship during that time?

A. I believe we had gone on the spot-check basis at that time.

Q. On the spot-check. At any rate, Colonel, no employee at Los Alamos Project had a post office address which would indicate that he was working at Los Alamos Project, isn't that right?

A. Generally speaking that is true except in so far as a post office box in the City of Santa Fe would so indicate. They were directed to give a certain office box, 1663, as I remember.

Q. That is correct.

A. Santa Fe.

Q. Now, how many miles was the Project from Santa Fe?

A. 30 or 35, about that.

Q. And how many miles was the Project from Albuquerque?

A. Well, Albuquerque is about 60 or 70 miles from—south of Santa Fe, and by road you can just add the extra 30 on. That makes about 100 miles.

Q. Now, you made at least as serious an attempt to censor the mail of employees during the period from August 1944 to November 1944 as was practically expedient?

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. And not only did you attempt to censor the mail to satisfy yourselves that no leak was coming out of there [fol. 1314] but you also attempted to keep surveillance over employees working in the Technical Area in so far as telephone calls were concerned, isn't that right?

A. Yes, sir. We monitored many telephone calls, again on a spot-check basis.

Q. And that was also true with respect to telegrams?

A. Yes, sir. Telegrams went through our office, as a matter of fact, as I recall.

Q. Now, was Neils Bohr, the famous scientist working on the Project in August 1944?

A. It was during the year 1944 that he was here. He first came to this country—no, I can't answer that question.

Q. Now there has been testimony here——

A. He came early in 1944, and I can't remember when.

Q. Well, is it your best recollection that he came to the Project prior to August 1944?

A. That is my best recollection but I must confess I am a bit uncertain.

Q. And would you say that he stayed at the Project at least a couple of months working there?

A. I don't think he ever stayed at the Project for that extended a period at one time. I could be wrong about that but he came several times and on a somewhat temporary basis.

Q. In other words, his visits to Los Alamos were sporadic but he did come back time and time again in order to do work on the Project; is that a fair statement?

[fol. 1315] A. That is my recollection.

Q. All right. I would like to ask you this question, Colonel: Was it part of the regulations at Los Alamos, as interpreted and as implemented, that a machinist in the service of the United States Army, working at Los Alamos Project would have knowledge of the true identity of Neils Bohr during the period from August 1944 to the latter part of November 1944?

The Court: That is very ambiguous. You asked whether it was part of the regulations whether he would have it?

Mr. E. H. Bloch: Let me reframe it, let me reframe it.

Q. Was it forbidden to a machinist working in the Technical Area during the period from August 1944 to the latter part of 1944 to have any knowledge of the true identity of Dr. Neils Bohr?

Mr. Saypol: Just a moment: I don't know how that question can be answered.

The Court: I don't either. What you are trying to ask him is, was it forbidden for anybody to tell it to him. That is what you are trying to ask.

Mr. E. H. Bloch: Was it forbidden for him to know and was it forbidden for anyone to tell him?

The Court: Well, it was forbidden for him to repeat it [fol. 1316] if he found out that it was forbidden for anybody to tell him.

Mr. E. H. Bloch: That is correct. That is what I am getting at.

The Court: But supposing someone told him—if somebody violated the security regulations, he would know but it would be forbidden for him to repeat it.

Mr. E. H. Bloch: That is correct.

The Court: I think you had better break that down.

Mr. Saypol: There are further objections to it because I can readily envision that one might properly learn of the identity of Bohr just as Greenglass might learn of the identity of Koski.

The Court: Well, I have practically covered that situation.

Q. Was it forbidden during the period from August 1944 to the latter part of November 1944 for any employee

working at Site Y, or the Los Alamos Project—especially in a technical area—to reveal to anybody the true identity of Dr. Neils Bohr?

A. Yes, sir, I would say that is a fair statement.

Q. And that prohibition would apply to a machinist working in the Technical Area?

The Court: It applied to everybody.

[fol. 1317] Q. To everybody?

A. Yes.

Q. Even the top scientists working on the Project, isn't that right?

A. Yes.

Q. Now, would that prohibition during the period we are talking about, that is June 1944 to the latter part of November 1944 also apply with respect to the true identity of Dr. Harold Urey?

A. Yes, sir.

Q. And would that prohibition during that period likewise apply to Dr. Oppenheimer?

A. Oh, yes, sir.

Mr. E. H. Bloch: I think that is all.

(The following took place at the bench.)

Mr. Saypol: This is a security matter which relates to the atomic bomb. The witness is going to establish the authenticity of the information that Greenglass gave to Rosenberg. I think your Honor will want to take the same precautions as have been taken heretofore, perhaps even more. Under those circumstances I submit that to your Honor's consideration.

The Court: This witness is I take it is going to repeat——

Mr. Saypol: I am going to read him the description as given by Greenglass.

The Court: And you are going to ask him what?

Mr. Saypol: Have him establish the authenticity of the cut-away sketch that he gave Rosenberg in September [fol. 1318] of 1945.

The Court: This is off the record.

(Discussion between Court and counsel at the bench off the record.)

(The following took place in open court.)

JOHN A. DERRY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Ladies and gentlemen, we are coming to another portion of testimony where I feel compelled to clear the courtroom. As I told you once before and I repeat, during the course of some cases, particularly a case of this character, while it might be in the interest of the country that we do not hear certain portions of testimony, yet, under our form of jurisprudence the defendants are entitled to absolute confrontation of every witness and every piece of evidence that is offered against them.

So with that in mind I am going to ask everybody but the press to leave the courtroom.

(All spectators leave the courtroom.)

The Court: I might also say, Mr. Stenographer, that with respect to that portion of the testimony that deals with the operation of the atomic bomb there is to be no trans-
[fol. 1319] cription made, and your stenographic minutes are to be considered impounded. Of course, if any counsel wants to have it read back for purposes of examination, it may be made available for that purpose.

Mr. Saypol: Would your Honor direct the clerk to unseal the testimony of Greenglass so that I may use it in my examination?

The Court: Very well.

Mr. Saypol: Let the record show that the direction is given.

The Court: You mean the testimony with respect to the atomic bomb?

Mr. Saypol: Yes, if the Court please. I haven't got a transcription of Greenglass' related testimony, and I will have to ask Mr. Slavin to read for me at the appropriate time, or to get his colleague, whoever it was who took the notes to read it.

Direct examination.

By Mr. Saypol:

Q. Mr. Derry, you are an electrical engineer, are you not?

A. Yes, sir.

Mr. Saypol: I should like the record to show that representatives of the Atomic Energy Commission are present in the courtroom and I take it the Court will allow them to be here?

The Court: Yes.

[fol. 1320] Mr. Saypol: I don't think they need be identified unless the Court desires.

The Court: No. Are they the same men who were here before?

Mr. Saypol: Yes.

The Court: They have been identified once before.

Q. What college did you graduate from?

A. I graduated from Rose Polytechnique Institute, Terre Haute, Indiana, June 1929 with degree of Bachelor of Science in electrical engineering.

Q. Thereafter did you obtain employment?

A. Immediately after leaving this school I worked for the Ohio Bell Telephone Company in Cleveland for about five months, and from there I went with the Pennsylvania Railroad Company on the electrification construction between New York and Washington. I was with them until January 1936. Would you like to have me go on?

Q. Yes, you might. It will make it a little easier.

A. At that point I became employed by the Rural Electrification Administration, United States Government, on engineering, designs, provision, construction and operation of rural electric lines. I was with them until my reserve commission that I got when I went to school was activated in April 1942.

[fol. 1321] Q. So you became an Army officer?

A. I became an Army officer.

Q. With what rank?

A. I came in as a 1st Lieutenant.

Q. How did you come out?

A. Lieutenant Colonel.

Q. When?

A. August 1946.

Q. So that from 1942 to 1946 you were in the United States Army?

A. Yes, sir.

Q. Did you receive an assignment in December of 1942?

A. I did. I was assigned to the Manhattan Engineer District.

Q. How long did you continue there?

A. I was with them in one job or the other until I got out of the Army in August 1946.

Q. Well, until April 1944 you were at Oak Ridge, were you not, as assistant to the Area Engineer?

A. Yes, sir. When I went in the Army I went into the Chief Engineer's Office in Washington, and in December was assigned to the Manhattan Engineer District and went to Oak Ridge and was there until April 1944.

Q. Did you receive another assignment then?

A. Yes. I was assigned back into General Groves' office as his liaison officer working betwen Washington, between General Groves and the Los Alamos Laboratory.

[fol. 1322] Q. General Groves of course was——

A. Commanding General.

Q. Commanding General in entire charge of the development of this Project at both Los Alamos, or, rather, the Project that is denominated as the Manhattan Engineer Project, is that right?

A. Manhattan Engineer District.

Q. And what actually was the objective of that Project?

A. To develop and make an atomic bomb.

Q. In other words, research and the——

A. Research and development.

Q. —development and manufacture?

A. Manufacture and delivery.

Q. Just to supplement your background, after you left the Army, it is the fact, is it not, that from January 1, 1947 to September 1948 you were associated with the Atomic Energy Commission?

A. What were those dates?

Q. January 1, 1947 to September 1948?

A. Well, I am still employed by the Commission, but——

Q. What was your job?

A. My job during that period was technical assistant to the general manager.

Q. What was your job after that, until January of 1950?

A. I was assigned as special assistant to the director of production, handling special tasks for the director of [fol. 1323] production.

Q. Of the Atomic Energy Commission?

A. For the Atomic Energy Commission, yes, sir.

Q. And from January 1950 until November 1950, did you continue to be associated with the Atomic Energy Commission?

A. Yes. I went from the Production Division to the Division of Biology and Medicine and held the job there as executive officer to the Division of Biology and Medicine.

Q. What do you do today?

A. I am again special assistant to the Director of Production, handling special assignments.

Q. Let us now go back to April 1944; from that date until January of 1947, as liaison officer for General Groves, did you have an occasion to visit the Los Alamos Project?

A. Yes, I went out, I believe, on the average of about once a month.

Q. Was it known at that time as "Los Alamos", or did it have some other name?

A. No, we identified it as "Project Y".

Q. When you made these visits, how long would you stay? How long would your work require that you stay there?

A. Dependent on the amount of work I had at the time. It ranged from one day to six days, seldom longer than a week.

[fol. 1324] Q. In the performance of your work as liaison officer for General Groves, did you have anything to do with production problems at Project Y?

A. I did. My assignment as liaison officer was to keep General Groves informed of the technical progress of the research, development and production phases of the atomic bomb Project at Los Alamos. Then beyond that, I could go on and say that probably my—most of my work was taken up, since General Groves left me pretty much alone, and I reported to him when it was necessary, making sure

that the Los Alamos Project had, oh, ample opportunity to get their job done, by providing them with avenues of approach to other Government agencies, the defense establishment, other scientific laboratories.

Q. You acted as a liaison with other Government agencies in connection with problems——

A. Yes.

Q. —procedures?

A. Yes.

Q. In other words, you had to straighten out all of the inter-related bugs; is that what it comes to?

A. That was about the job, right.

Q. That was your job. How long did you continue that work?

A. I continued the job, working closely with the Los Alamos Project, right up to the end of the war. Toward the end of the war, as you know, we had a New Mexico test. I assisted in the planning of that test. Then after the [fol. 1325] test, I was General Groves' operation officer, if you want to call it that, for the combat operation in the Mariannas.

Q. To your knowledge, was the work and progress and everything associated with it of a classified character, from the standpoint of security?

A. Oh, the entire Manhattan Project was classified. Los Alamos was a little more classified than anything else.

Q. Do you recall while you were doing that work sometime in August of 1945, July or August, around that time, in the summer, there was a first test explosion or first explosion of an atomic bomb in that vicinity?

A. Yes.

Q. Tell us what knowledge you had of the preliminaries leading up to that explosion and the related facts in connection with the explosion?

A. Well, we started planning for it many months in advance of one of these things.

Q. Did you take part in those plans?

A. I took part in all of the planning. I visited Los Alamos many times, in assisting them in their planning, assisting them in their procurement of supplies and equipment and personnel. Because of my assignment in General

Groves' office, I did not go to the test; I stayed in Washington, but I was there in Washington when the operation [fol. 1326] took place in July, July 16, I think it was, 1945.

Q. Was everything associated with the preparation and the actual test classified?

A. Highly Classified.

Q. You say "Highly Classified"; "Highly Classified" is a secret?

A. Top secret.

Q. Is a Government secret?

A. Or top secret.

Q. During the year 1945, did you have occasion to see the actual atomic bomb which was being developed and constructed at the Los Alamos or the Y Project?

A. Many times.

Q. What was the occasion, or what were the occasions for your seeing these things?

A. In my connection with my technical assignment with General Groves and the laboratory, I had to keep informed on the work and progress, be able to do the job properly.

Q. I take it, you likewise were informed of some of the experiments, many of the experiments incidental to the development of the atomic bomb?

A. I was.

Q. These, too, I take it, were the subject of reports, communications from you to General Groves, were they not?

A. They were.

Q. There has been testimony in this trial by a witness, David Greenglass, regarding the structure of the atomic bomb, and he likewise has identified a cross-section sketch of the bomb, which is Government's Exhibit 8 in evidence. [fol. 1327] I would like you to listen, Mr. Derry, while the court reporter reads the witness Greenglass' testimony as he gave it here, relating to the bomb, a description of the bomb connected with this Government's Exhibit 8, and then I shall ask you some questions.

Mr. E. H. Bloch: If the Court please, I object to this method of procedure. I think Mr. Saypol has stated that it is his purpose to have this witness corroborate Greenglass' testimony on this particular point, and I suggest very strongly that before this witness is given Greenglass'

testimony, he be asked to describe a cross-section of the bomb, and then, I say, it is for the jury to decide. I have no objection to the reading of the testimony right after this witness——

The Court: The jury will have to decide anyway, but they are entitled, on a subject as technical as this and a subject on which there is so little knowledge outside of the technical field, to have the help of an expert.

Mr. E. H. Bloch: Correct. I am not disputing that at all, your Honor. What I am saying is that I think it is unfair; I think it is leading and suggestive at this time to say to this witness, "Now, you read this testimony and tell us about this and that."

My suggestion is—and I think it the fair way of pro-[fol. 1327-A] ceeding—is to have the witness testify to what he considers to be, or describe a cross-section of the atomic bomb to the jury, and then if the jury desires, or if the Court instructs have Greenglass' testimony read right after he describes, or even during the course of his testimony.

The Court: It is overruled.

Mr. E. H. Bloch: I respectfully except.

[fol. 1328] By Mr. Saypol:

Q. Will you listen while Mr. Slavin, the reporter, reads the description.

(Previous testimony given by Mr. David Greenglass read by the Court Reporter.)

The Court: Doesn't that cover it?

Mr. Saypol: All right, Mr. Slavin, thank you.

Q. Mr. Derry, does the description as Mr.——

The Court: May I at this point say to the members of the press that I do hope that they will exercise the same good judgment that they exercised in publishing the information as it came from the lips of Mr. Greenglass.

Q. Mr. Derry, does the description as read by Mr. Slavin in conjunction with the sketch before you, Government's Exhibit 8, relate to the atomic weapon which was in the course of development in 1945?

Mr. A. Bloch: I object to the question on the ground that it is virtually a question of characterizing by one witness of another witness's testimony, and upon the further ground that this witness has failed to qualify as an expert on the ingredients and their functions contained in the statement just read to him.

The Court: Overruled.

Mr. A. Bloch: Exception.

The Witness: Would you read the question again, give [fol. 1329] me the question again?

(Question read.)

A. It does.

The Court: I believe you told us that you knew each and and every detail of the construction of that weapon, that was your job?

The Witness: It was my job to know what went into the parts of it.

The Court: And you understood the entire subject matter, didn't you?

The Witness: Yes, sir, I did. It was my task that General Groves gave to me.

Q. And you still do understand it?

A. I still do.

Q. Does the knowledge as disclosed in the material read by Mr. Slavin, in conjunction with the sketch before you, Government's Exhibit 8, demonstrate substantially and with substantial accuracy the principle involved in the operation of the 1945 atomic bomb?

Mr. A. Bloch: I respectfully urge the same objection made to the original question put to the witness.

The Court: Overruled.

A. It does.

Q. From that testimony and from that exhibit you perceive clearly the structure of the weapon as it actually was?

A. I didn't get that question.

[fol. 1330] Q. That is, from the testimony as it has been read to you and from the sketch, Exhibit 8, can you perceive——

The Court: Can an expert.

Q. Can you——

The Court: I would say, can an expert in that particular field perceive.

Q. Can a scientist, and can you, perceive what the actual construction of the bomb was?

A. You can.

Q. To a substantial degree?

A. You can.

Q. Was this information classified at the time?

A. It was classified top secret.

Q. Is it still classified?

A. Yes, sir.

Q. Does this information relate to the national defense of the United States of America?

A. It certainly does.

Mr. A. Bloch: I object to it upon the ground that it is calling for a conclusion of the witness.

The Court: Well, it is something which the jury will have to decide on ultimately. That is his opinion, but the jury will have to decide on that question. It is a question that has to be given to him.

Mr. Saypol: I had thought at some stage of this pro-
[fol. 1331] ceeding, perhaps more than once, there was some concession that the atomic bomb was related to the national defense.

Mr. E. H. Bloch: I do not think there is any question about that, and I did not want to get up and object to the question upon the ground that it was superfluous.

The Court: In other words, you really withdraw the objection?

Mr. E. H. Bloch: I do.

The Court: That it states a conclusion?

Mr. A. Bloch: It is such an offensive thing to me to hear an improper question, that is why I got up.

The Court: All right. Now, that you have heard it, you withdraw the objection?

Mr. A. Bloch: Certainly.

The Court: Go ahead.

Q. Does the information that has been read to you, together with the sketch concern a type of atomic bomb which was actually used by the United States of America?

A. It does. It is the bomb we dropped at Nagasaki, similar to it.

Q. Do you know whether at the time in question, 1945, any foreign government had the knowledge which our scientists possessed regarding the development and structure of that [fol. 1332] weapon, outside of the British and Canadians?

A. No, I don't know, outside of the British and Canadians.

Q. No nation possessed it?

Mr. Bloch: So far as this witness knows.

The Court: So far as you know.

Mr. Saypol: Oh, indeed.

A. Yes.

Mr. Saypol: I asked the witness a question on the basis that he was the liaison to the man directly and officially charged with the development and use of the weapon.

Q. Am I correct in that, Mr. Derry?

A. That is right, sir.

Mr. Saypol: That is all. You may cross-examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. That exhibit that you hold in your hand or that you held in your hand—I think it has been marked Government's Exhibit 8—was there in the files of the United States Government, whether at the Los Alamos project or in Washington, D.C., a cross-section of the atomic bomb, substantially similar to the cross-section reflected in Government's Exhibit 8?

A. We had many drawings.

[fol. 1333] Q. None whatsoever?

A. We had many.

The Court: He said "many".

Mr. E. H. Bloch: Oh, I am sorry.

Q. Many. Did you have any which were substantially the same as Government's Exhibit 8?

Mr. Saypol: May I know from counsel whether he means that the Government agencies had any sketches prepared by Greenglass?

Mr. Bloch: No, anybody, anybody.

Mr. Saypol: Well, I think that must be obvious.

A. You mean in the Manhattan District or Los Alamos?

The Court: Let him answer it.

Q. Either at Los Alamos or any other place where the Manhattan District was involved.

A. My connection was at Los Alamos with respect to that.

Q. All right, then let me limit my question then: Was there any sketch or blueprint or any other documentary matter in the form of a plan or sketch or a blueprint which was substantially similar to the sketch reflected in Government's Exhibit 8?

A. At Los Alamos, yes.

Q. Pardon me?

A. At Los Alamos, yes.

Q. There was?

A. Yes.

Q. And when for the first time would you say such a sketch was on file, was made and put on file in the regular course of business at the Los Alamos project?

[fol. 1334] A. Well, it is hard to say exactly when, for this thing was in the developmental stage from the time we initiated the project until it was done. There are various and different kinds of developmental aspects of the weapon. It was constantly changing. When it was specifically put in the file, I have no way of knowing.

Q. All right. Would you say that Government's Exhibit 8 reflects a sketch of the atomic bomb when it had already been perfected?

A. Substantially.

Q. Would that refresh your recollection as to when such a sketch was made, used and filed at Los Alamos?

A. No, because, let me be clear: I was not assigned to the Los Alamos laboratory. I wasn't at the project except in a technical liaison capacity between General Groves' offices and the Los Alamos Laboratory. My dealings had nothing to do with the preparation of material and sketches,

placement of files, arrangement of material at the laboratory.

Q. I understand that, but in your important task as a liaison between General Groves and the project itself, is it not a fact that many of these sketches and many of the plans and documents in the developing stages of the atomic bomb [fol. 1335] construction and development came into your hands?

A. I saw them in the course of my business.

Q. You see, what I am trying to find out, Mr. Derry, is whether or not there ever came into your hands and whether you looked at any sketch which was substantially similar to the sketch reflected in Government's Exhibit 8.

A. Yes, I have seen them. I saw them at Los Alamos.

Q. What I am trying to do is fix the time, if you can refresh your recollection, as to when you first saw a sketch which was similar to the sketch reflected in Government's Exhibit 8.

A. Well, when I first went out there in April 1944 I was given information then about what developments were in work at that time on the weapon. Then as I kept going back, it kept constantly changing. So I would say from April 1944 through my entire association with the Los Alamos laboratory at one stage or the other I saw the work in progress; from April 1944.

Q. I understand that, but what I would like to ask you now is, does Government's Exhibit 8 reflect a cross-section of the bomb after there had been many, many months of development and experimentation?

A. The answer is yes to that.

Q. Would that refresh your recollection as to just about [fol. 1336] when a sketch similar to Government's Exhibit 8 was made and used and filed in the Los Alamos project?

A. I specifically can't say exactly when because it was in constant change, a state of flux.

Q. Well, maybe this might refresh your recollection: could such a sketch have been in the Government's files prior to January 1945?

A. Prior to January 1945? I would say yes.

Q. Just one further question, Mr. Derry: If you were asked to give a written description elucidating this sketch in Government's Exhibit 8 so that any scientist or any

person of intelligence interested might understand what you were talking about and trying to describe, could you compress a description of that within 12 pages?

A. You could give substantially the principle involved.

Q. That would not, of course, be a complete description, would it?

A. You would have the principle. That is what is intended here.

Q. Would you say from what Mr. Slavin read to you from the testimony of Mr. Greenglass where Mr. Greenglass described the various things on that sketch, including the initials, that that would represent a complete description of the cross-section of the atomic bomb and the function of the atomic bomb and how it works and the principles under [fol. 1337] which it works?

The Court: I don't think it was offered on the theory that it represented a complete—is that true, or am I mistaken?

Mr. Saypol: Indeed not. As I said when I had the witness Koski on the stand, the import of this whole thing is that there was enough supplied to act upon——

The Court: That was my understanding of the question.

Mr. Saypol: You remember, your Honor, I used the colloquialism, tip off. That is exactly——

The Court: I don't think it was offered as a complete or as a detailed description.

Mr. E. H. Bloch: That is right.

The Court: But just as the witness has testified it is a description of a principle upon which it works.

Mr. E. H. Bloch: Now what I am trying to do your Honor, is to use this question for a few follow-up questions.

The Court: I thought you said before you had one more question.

Mr. E. H. Bloch: I didn't know what the answer was going to be. I thought the answer might have been that this was a complete description, and that would have been [fol. 1338] my last question. Now that the answer is that it is not complete I have further questions.

By Mr. E. H. Bloch:

Q. This is not a complete description?

A. This substantially gives the principle involved.

Q. Would you say as a scientist, a graduate engineer who has received college courses and obtained a degree in engineering, and had the experience that you have detailed to us here, that a machinist without any degree in engineering or any scientist would be able to describe accurately the functions of the atom bomb and its component parts——

The Court: Objection sustained.

Q. Both in relation——

Mr. E. H. Bloch: May I finish it?

The Court: Yes.

Q. Both in relation to their independent functions and to their inter-related functions?

The Court: Objection sustained.

Mr. Saypol: I would like the record to show that it is the jury who will judge that from Greenglass's testimony; not this witness.

The Court: Yes, we have had a bit of summation right now.

So we will take that out of the final summation.

[fol. 1339] Mr. E. H. Bloch: It wasn't intended as a summation, your Honor. That is all.

The Court: Anything further?

Mr. E. H. Bloch: No.

(No further cross-examination.)

The Court: We will take our recess at this point. We will recess until 2.15.

Mr. Saypol: Will your Honor order this resealed on the record?

(Referring to Government's Exhibit 8 and stenographic notes.)

The Court: Yes.

(Recess to 2.15 p. m.)

[fol. 1340] Afternoon session.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Let's see whether we can now approximate how much longer the Government's case will take, so the defense will be prepared, and they can start their case.

Mr. Cohn: I think, your Honor, that at present indication, we ought to be able to rest by lunch time tomorrow.

The Court: All right.

Mr. Cohn: The defense can probably plan to go on tomorrow afternoon.

The Court: I think the defense can probably take that as an indication.

Mr. A. Bloch: That takes me by surprise. Only this morning I understood that Mr. Saypol told you that it would probably take all day Thursday.

The Court: I know, it is true he did say that. The surprise between this morning and now wouldn't make any difference. You couldn't have done anything between this morning anyway; you were in court; but you were told when we adjourned on Friday to be prepared along the middle of the week for the defense.

Mr. A. Bloch: I did not so understand it, your Honor. I understood that the District Attorney told you that it would take him four or five days in which to complete his [fol. 1341] case. Now, today is really the first day of those four or five days.

The Court: Well, that may be.

Mr. A. Bloch: I really wanted Saturday, at least.

The Court: You had a long week end, and I am sure you didn't waste it; I am sure you did some work on your defense; am I right, Mr. Bloch?

Mr. A. Bloch: We were very busy all of the three days, your Honor, but I never anticipated being called upon to put anybody on, on behalf of the defense, this week.

The Court: Well, I am afraid you are going to have to do it if they finish their case.

Mr. E. H. Bloch: Well, may I ask the Court this favor, then: Of course, we did work all week end and we tried to gear our work to adjust it to when we might need certain things. Now, if the prosecution concludes their case by

tomorrow afternoon, may we request of your Honor that we start our defense the following morning?

The Court: No, no, we have had a lot of adjournments and I contemplate now giving the jury all of Friday off, it is Good Friday; and I believe that if they finish tomorrow—[fol. 1342] and, of course, we are merely anticipating something that may not happen—if they finish tomorrow at the luncheon recess, you are to be prepared to go right on, and I believe that you ought to be prepared to go right on no matter what time they finish, except, of course, if it is about four o'clock in the afternoon or something like that. Then we will recess until the next morning, but if their is a reasonable time left during the course of the afternoon, you should be prepared to start.

Mr. E. H. Bloch: I then suggest to your Honor that in light of our conversation at the bench about when you would want the proposed requests to charge——

The Court: It still stands for next Monday.

Mr. E. H. Bloch: Oh, it still stands for next Monday.

The Court: That is right.

Mr. E. H. Bloch: That will take some load off our shoulders.

The Court: No, I wouldn't need it before.

All right, proceed.

(Government's Exhibit 18-K marked for identification.)

Mr. Cohn: Now, your Honor, this is another document from Sobell's Selective Service file. I showed it to counsel at the luncheon recess and they have made the same con-[fol. 1343] cession or stipulation, whatever you would like to call it, that the signature of the registrant here is the signature of the defendant Morton Sobell.

The Court: What is that exhibit?

Mr. Cohn: That is 18-K for identification at this time.

The Clerk: Manuel Giner de Rios.

The Court: Have you got an interpreter here?

Mr. Cohn: Yes, your Honor, I was just going to approach that point. Mr. Rios speaks a little bit of English, but not enough.

Mr. Wiesner, will you come forward, please?

(The Interpreter, Eugene Wiesner, stepped forward.)

Mr. Cohn: If there is any question of the qualifications of the interpreter, your Honor, I would state for the record that he has been an official Spanish interpreter for the Immigration and Naturalization Service for the past eight years and has had considerable experience testifying in this court.

Mr. Kuntz: We don't raise the question.

The Court: All right.

(Eugene Wiesner sworn as interpreter.)

[fol. 1344] Manuel Giner de Los Rios, called as a witness on behalf of the Government, having been duly sworn through the Interpreter, testified through the Interpreter as follows:

The Court: Would you speak up, please, Mr. Interpreter?

The Interpreter: I will, sir.

Direct examination.

By Mr. Cohn:

Q. Now, Mr. Rios, will you just sit back and try to keep your voice up as you testify.

A. Yes.

Q. Mr. Rios, do you reside in Mexico City?

A. Yes, sir.

Q. And what is your business?

A. I am an interior decorator.

Q. Will you tell us in just a little bit more detail exactly what that is?

A. I have my own interior decorator's establishment, and there are various interior decorators' shops that work for me.

Q. And where is your business located?

A. At 123 Calle Articulos, No. 37, office No. 802, Mexico City.

Q. Will you tell us now where in Mexico City you reside?

A. No. 153 Calle Octava de Cordoba.

Q. Cordoba?

A. Mexico City.

Q. How long have you lived at that address?

A. Since December 1940.

[fol. 1345] Q. December of 1940. Now would you tell us what kind of a place that is? Is it an apartment house, a boarding house or what?

A. It is an apartment house.

Q. About how many apartments are there in that house?

A. Six.

Q. And do these apartments have numbers?

A. Yes.

Q. Will you tell us the number of your apartment?

A. Apartment 5.

Q. Now in July of 1950 were you residing at this address on Cordoba street in apartment 5?

A. Yes.

Q. Did there come a time at the beginning of July when you saw an American at that address?

A. Yes, sir.

Q. Do you see that man here in court?

Q. Yes, sir, I see him.

(Defendant Sobell stands.)

Mr. Cohn: May the record indicate that the defendant Sobell has been identified by the witness.

Q. Will you tell us, Mr. Rios, of the first occasion on which you saw the defendant Sobell?

A. I saw him on the staircase of the apartment.

Q. Under what circumstances?

A. The gentleman needed a gas tank for the kitchen in his apartment.

[fol. 1346] Q. A gas tank?

A. Yes, cooking gas.

Q. Do you know whether or not Sobell had rented an apartment at this address on Cordoba?

A. Yes, I know he did.

Q. When, in relation—on what day in relation to the first time that you saw him?

A. I believe it was on the same day when I met him on the stairs.

Q. Now, Mr.Rios, you speak a little English, do you not?

A. Yes, a little.

Q. And did you converse with Sobell in English on that day about this tank of gas?

A. Yes, because the woman caretaker of the house didn't understand any English and I found out that he needed a tank of gas for cooking.

Q. And did you relay that message to the caretaker?

A. Yes.

[fol. 1347] Q. In Spanish? The question was relayed in Spanish?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. Now, what was the next occasion on which you saw Sobell?

A. Possibly the next day or two days later I saw him leaving by the same staircase.

Q. Did you know his name at this time?

A. No, sir.

Q. On what occasion did you learn his name?

A. When I invited him to my party in my house.

Q. About how long after Sobell had moved in was he invited by you to this gathering at your apartment?

A. About five or six days after.

Q. Who was present at this party? I won't want the names. Was it family, friends or what?

A. It was a party for the family and friends in honor of the saint's day, celebrating the name of that friend of ours, a woman friend.

Q. Did you continue to see Sobell after that from time to time around the house?

A. I saw him and members of his family at times going to the terrace to take sunshine, a sun bath.

Q. I would now direct your attention to a particular conversation and ask you whether or not there was an occasion when Sobell came to you and said he wanted to talk to you about something.

A. It was a few days after we had dinner with them be-

[fol. 1348] cause they invited us to their house.

Q. In other words, you had dinner with them at their home, at their apartment?

A. Yes.

Q. What was the number of their apartment?

A. Apartment 4.

Q. They had apartment 4 and you had apartment 5, is that right?

A. Yes.

Q. Now, did I understand you to say that this particular conversation in which Sobell came to you and said he wanted to talk to you about something took place a few days after you had visited Sobell in his apartment?

A. Yes, exactly.

Q. Now, would you tell the Court and jury what he said and what you said on that occasion?

A. He asked me if I wanted to be a friend of his.

Q. "He asked me if I wanted to be a friend of his"?

A. If I could be a friend of his and I told him yes, I would, without knowing, of course, what he was looking for. He was a little nervous, a little worried.

Mr. Kuntz: I move to strike that out, if your Honor please.

The Court: No, I will let it stand.

A. And he asked me how one could leave Mexico. And I told him that there would be no trouble if one has his [fol. 1349] papers in good order. He asked me if there would be any other way and I told him no, I didn't know of any other way.

Q. Did he tell you where he wanted to go?

A. No, he didn't mention any place in particular.

Q. Did he mention any place at all? I am not referring only to a city or town; I want to know if he mentioned any location.

Mr. Kuntz: Wait a second. I submit, if your Honor please, this witness has answered the question.

The Court: Overruled.

A. He didn't specify any place or any country outside of Mexico.

Q. Was there anything more said in the course of that conversation?

A. He told me he was worried because he said he was afraid to return to the Army, the U. S. Army since he has already seen a war, has experienced a war.

Q. Did he make any statement as to why he wanted to leave Mexico?

A. Only because he was afraid.

Q. Did he say specifically what he was afraid of?

Mr. Kuntz: If your Honor please, that has been answered now.

The Court: Overruled.

Mr. Kuntz: Exception.

[fol. 1350] A. He was afraid that they were looking for him so that he would have to go to the Army.

Q. Did he say who he thought was looking for him?

A. The military police.

Q. What did you say?

A. I told him I cannot do anything to help him and that I can't get any way for him to leave Mexico.

Q. After this conversation did you see Sobell on any other occasion?

A. Yes, on various occasions. On one occasion he came to my house and asked for a hammer to break open a coconut.

Q. Now, did you ever have any conversation with him in the course of which the seaport of Vera Cruz was mentioned?

A. He told me a few days later he told me he would like to go to the Port of Vera Cruz.

Q. What was that conversation? Tell us what he said and what you said.

A. He asked me how one can get to Vera Cruz.

Q. What did you tell him?

A. And I told him the directions; I explained to him the directions, how to go to the bus station, how to get to the bus station to go to Vera Cruz.

Q. Did there come a time when Sobell left Mexico City to go to Vera Cruz?

A. Yes.

Q. About when was this?

A. Sometime around the 20th or 22nd of July 1950.

[fol. 1351] Q. About how long was he gone About how long was Sobell gone from Mexico City?

A. For about 15 days.

By the Court:

Q. Did he make the trip himself and leave his family behind?

A. Yes, he made it alone.

By Mr. Cohn:

Q. Now, during the 15-day period that he was absent from Mexico City did you receive any communication from him?

A. I received two letters.

Q. When did the first come?

A. About eight days after his departure.

Q. What was the postmark on the envelope?

A. Vera Cruz.

Q. To whom was the letter addressed?

A. The envelope was addressed to my name, Manuel Giner de Los Rios.

Q. Did you open the letter, did you open the envelope?

A. Yes, I opened it, because it was addressed to me and I have friends in Vera Cruz.

Q. What was inside?

A. A letter which started out "Dear Helen", which read, "Dear Helen".

Q. I think you told us your first name is Manuel; is that right?

A. Yes.

[fol. 1352] Q. Did you know Mrs. Sobell's first name?

Mr. Kuntz: We will concede that it is Helen.

Mr. Cohn: All right, your Honor.

The Court: All right.

Q. After you opened this envelope addressed to you and found the letter beginning "Dear Helen", what did you do?

A. I went to see Mrs. Sobell and I turned it over to her.

Q. Was there any conversation?

A. I asked her how come that I received a letter which is not for me?

Mr. Kuntz: Wait a second. I understood the question to be "Did you have any conversation?" I thought there

would be a yes or no answer, but since the conversation is attempted to be given, I must object to any conversation between this witness and Helen Sobell.

Mr. Cohn: I am inclined to think the objection is well taken, your Honor.

The Court: You are withdrawing that question?

Mr. Cohn: Yes.

The Interpreter: Sometimes a question may be a little longer and I want to be very exact; can I use a slip of paper for an occasional word to put down, to facilitate and to be absolutely right?

The Court: Yes.

[fol. 1353] Q. I will ask this question: Did you have a conversation with Mrs. Sobell about this letter, addressed to her, which came in an envelope to you——

Mr. Phillips: Just yes or no.

Q. —just yes or no?

Mr. Cohn: I can get it, Mr. Phillips.

A. Yes.

Q. After that, did you receive any more letters from Sobell?

A. Yes, one more.

Q. About when?

A. About six or seven days after the first one came.

Q. Did you notice the postmark on the envelope?

A. That time it came from Tampico, Mexico.

Q. That is the second seaport in Mexico; is that correct?

A. Yes.

Q. Vera Cruz is the first, the leading one?

A. Yes.

Q. Now, to whom was the envelope addressed?

A. Again to me.

Q. Did you open the envelope?

A. Yes, because I have friends and acquaintances in Tampico.

Q. What was the salutation on the letter this time?

A. The same as before, "Dear Helen".

Q. Did you pay another visit to Mrs. Sobell?

A. Yes.

[fol. 1354] Q. Am I correct in stating that you had some discussion with her about the repetition of this practice?

A. Yes, sir.

Q. As the result of that conversation or after that conversation no further letters intended for Mrs. Sobell were addressed to you; is that correct?

A. Yes, I didn't get any more.

Q. Now, I think you told us Sobell was away for about 15 days; is that right?

A. Yes, approximately.

Q. And he returned to Mexico City thereafter?

A. I know that he returned, but I did not see him.

Q. After his return; is that right?

A. Yes.

Q. Do you know approximately what date Sobell was deported to the United States by the authorities?

Mr. Kuntz: I object to that, if your Honor please. There is no proof here of any deportation, no proof of any action by the Mexican authorities. To ask a citizen a question like that, I think, is highly improper.

The Court: To ask a citizen?

Mr. Kuntz: A civilian, a person not connected with any Government.

The Court: You mean, to ask anybody?

Mr. Kuntz: To ask anybody.

Mr. Cohn: Of course, your Honor, I am asking a ques-[fol. 1355] tion. I think we have other proof coming.

The Court: You have other proof coming of deportation?

Mr. Cohn: Yes, your Honor.

Mr. Phillips: One moment. I object to the question at this time. If he has other proof, let him produce the proof.

The Court: Oh, Mr. Phillips, let us not go through that again. Do you want two or three witnesses testifying at the same time?

Mr. Phillips: I do not concede the fact.

The Court: Of course you don't; you don't concede anything. They are trying to prove it and they can't prove it all at one time.

Mr. Cohn: Your Honor, I am going to withdraw the last question.

The Court: All right.
Mr. Cohn: I have no further questions.
Mr. Phillips: No questions.
The Court: Tell him to step down.

(Witness excused.)

[fol. 1356] The Clerk: Minerva Bravo Espinosa.

Minerva Bravo Espinosa, called as a witness on behalf of the Government, being first duly sworn through the interpreter, testified through the interpreter, as follows:

Direct examination.

By Mr. Cohn:

Q. Now, would you tell us where you reside, Miss Bravo?
A. I live in Vera Cruz, Mexico.
Q. At what street address in Vera Cruz?
A. At No. 41 Calle Allienda.
Q. How long have you resided at that address?
A. For about four or five years.
Q. What is your occupation?
A. I am an employee.
Q. An employee; is that correct?
A. Yes.
Q. Of what concern?
A. In an optical store.
Q. Where is this optical store located?
A. At No. 139 Calle Cinco de Mayo, in Vera Cruz.
[fol. 1357] Q. That is a street address in Vera Cruz?
A. That is a street address in Vera Cruz.
Q. What is the name of the concern, the optical concern which employs you?
A. It is called Optico Palacios. Palacios is the name of the owner of this shop or store.
Q. Palacios is the owner of the shop, is that correct?
A. That is right.
Q. For how long a period of time have you been employed at Optico Palacios?
A. For about five years.

Q. What are your duties there?

A. I attend to the clients who come to make purchases and also work in the office, do work in the office.

Q. Am I correct in assuming that at this optical shop the business consists of selling—making and selling glasses to customers?

A. Yes.

Mr. Kuntz: Just for the purpose of saving time, if Mr. Cohn wants me to concede that we had a pair of glasses made in that store, we will concede that.

Mr. Cohn: Oh, I think there is a little more, your Honor.

Mr. Kuntz: All right.

Q. Now do you recall the 23rd day of July 1950?

A. Yes.

Q. On that day did an American come to your store?

[fol. 1358] A. It was on the 26th.

Q. 26th. I stand corrected. The 26th of July, is that correct?

A. Yes.

Q. Did an American come to your store on that day, on the 26th of July?

A. Yes.

Q. What was his name?

A. Mr. M. Sand.

Q. Do you see this Mr. Sand here in court today?

A. Yes.

Q. Where is he seated?

A. The third gentleman from this side (indicating.)

(The defendant Sobell stands.)

Mr. Cohn: May the record indicate that the witness has identified the defendant Sobell as M. Sand.

Q. Now when this Mr. Sand came to your shop on that day did he place an order for a pair of glasses?

A. Yes, a pair of glasses.

Q. Did he fill out any papers in connection with his purchase?

A. Yes.

(Marked Government's Exhibit 21 for identification.)

Q. What kind of a paper did he fill out?

A. It was a card.

Q. What kind of a card, tell us something about it.

A. It was a card which the purchasers make out to specify what they buy.

Q. Were you present when this Mr. Sand filled out that [fol. 1359] card?

Mr. Kuntz: We will concede that we filled out the card and used the name of M. Sand and bought a pair of glasses there. If that is what Mr. Cohn wants I will be very happy to give it to him.

Mr. Cohn: Well, that is fine, your Honor. The concession now is that the pair of glasses was purchased under the name of M. Sand, that the man using this alias was defendant Sobell. Is that correct?

Mr. Kuntz: Mr. Cohn, if you had asked me that before I would have been glad to give it to you.

Mr. Cohn: Your Honor, I find that after the proof comes in sometimes it is regarded as good tactics to get up and say it is conceded and that it would have been conceded before. I bow to such maneuvers. In former days——

Mr. E. H. Bloch: I object to that. I hope you are not——

The Court: All right, disregard that statement, ladies and gentlemen. Very well.

Mr. Cohn: Your Honor, I cannot very well go to defense counsel and tell them all the proof we have and find out what they will concede and what they won't. If we possibly can do it, as I think we have to a very great extent in this trial, to save time and money, we have done [fol. 1360] that.

The Court: All right.

Mr. Kuntz: I say in each instance where the prosecution came to us, either of defense counsel, and asked for a concession as to a bank record, a concession as to Morton Sobell's signature, and so on, we have complied in each case. We have never turned them down.

The Court: No, there have been occasions where you have not but I will say in the greater number of cases you have. There have been instances where you haven't.

Mr. Cohn: And specifically the concession that Mr. Kuntz

offered me a few minutes ago was that a pair of glasses had been purchased by the defendant Sobell.

The Court: Let us have no further argument about it. I see no necessity for this prolonged discussion.

Now have you got your concession on the record?

Mr. Cohn: Very well, your Honor. We would like this now in evidence.

The Court: Very well.

Mr. Cohn: Would you like to look at it (handing to Mr. Kuntz)?

The Court: What is that, please?

[fol. 1361] Mr. Cohn: This is the card the witness has testified the defendant filled out in purchasing the pair of glasses.

Mr. Kuntz: No objection.

Mr. Cohn: May it be received in evidence, your Honor.

(Marked Government's Exhibit 21.)

Mr. Cohn: May I pass that to the jury, your Honor? I have no further questions of the witness, your Honor.

The Court: Any cross?

Mr. Kuntz: No cross, your Honor.

The Court: Witness excused.

Mr. Kuntz: May I make a suggestion so that I won't be interrupting. If Mr. Cohn will tell me privately what he wants to prove, maybe I can concede it.

Mr. Cohn: I think there is a chance that Mr. Kuntz will concede it, but the testimony of this witness will consume but one minute, and I think since the man is here we can go ahead, if that is agreeable.

The Court: Yes. Of course, we are anxious to let some of these people get back. They seem to be pretty well represented.

Mr. Cohn: Yes, I think so. I should think we shouldn't let them return without testifying.

[fol. 1362] JOSE BROCCADO VENDRELL, called as a witness on behalf of the Government, being first duly sworn, testified through the Interpreter as follows:

Direct examination.

By Mr. Cohn:

Q. Mr. Brocaddo, are you one of the administrators of the——

The Court: His name is Venrell.

Mr. Cohn: With all due deference, your Honor, I think the last name is overlooked in addressing the person.

(Addressing Interpreter) Would you ask the witness what he likes to be called? Mr. What?

The Interpreter: Broccado.

Q. Now, sir, are you one of the administrators of the Grand Hotel Diligencias in Vera Cruz, Mexico?

A. Yes.

Q. Have you produced for us here in court a record kept by that hotel in the regular course of business?

A. Yes, sir.

Q. Does this record consist of a registration card and a hotel bill?

A. Yes. It is a copy of it.

Q. In the name of a man named Morris Sand?

A. Yes, sir.

Mr. Cohn: I am not going to ask you any more questions.

[fol. 1363] Mr. Kuntz: I will make an offer: if you show it to me I will show it to my client and if it is his signature we will concede it.

(Marked Government's Exhibits 22-A for identification and 22-B for identification.)

(Handed to Mr. Kuntz.)

Mr. Kuntz: No objection. We concede the signature. No objection.

Mr. Cohn: May it be received, your Honor? The other is just a bill, Mr. Kuntz. If you don't object to this I am sure you won't object to that.

(Government's Exhibits 22-A and 22-B for identification marked in evidence.)

Mr. Cohn: May I display this to the jury?

The Court: Is that all?

Mr. Cohn: I have no further questions of the witness.

Dora Bautista, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Cohn: I haven't read these exhibits to the jury. I think they are short and speak for themselves. I might merely point out that the bill indicates that Mr. Sand or Mr. Sobell was at the hotel in Vera Cruz until the 30th day of July 1950.

[fol. 1364] Mr. Kuntz: I think I probably can use the same procedure on this witness.

Mr. Cohn: If Mr. Kuntz cares to state what he will concede concerning Tampico.

Mr. Kuntz: I don't know. Suppose you tell me privately what you intend to prove and I will probably concede if it is in accordance with the facts.

Mr. Cohn: I would like, if Mr. Kuntz asks me, to make a statement.

Mr. Kuntz: Look, I think it is only fair to tell me privately what he wants to prove. If it is in accordance with the facts I will concede it.

The Court: Do you want the concession, Mr. Cohn?

Mr. Cohn: I don't know what the concession is going to be.

Mr. Kuntz: I don't know what he wants.

The Court: Tell him what you want.

Mr. Saypol: Tell him.

Mr. Cohn: May I state it on the record?

Mr. Kuntz: Why don't you tell me privately? Then no harm will come if I can't concede it.

Mr. Cohn: Your Honor, I think we will have to continue with our proof. I think if counsel have anything more we ought to do it at the bench, or the best thing would be [fol. 1365] to let us put in our proof and the defense have

its turn. I don't think much is accomplished by offers of this kind.

The Court: Proceed.

Mr. Kuntz: I have no objection to Mr. Cohn stating openly in front of the jury and your Honor what Mr. Saypol asks me to concede.

The Court: I don't want it. Now proceed.

Mr. Cohn: Whenever I think we can accomplish something by a concession I will say so.

(The witness testified through the interpreter.)

Direct examination.

By Mr. Cohn:

Q. Where do you reside, Miss Bautista?

A. It is No. 513 Carranza Oriente, in Tampico, Mexico.

Q. Miss Bautista, are you employed as a clerk at the Tampico Hotel in Tampico?

A. Yes.

Q. Were you so employed on July 30, 1950?

A. Yes.

Q. Do you remember that date?

A. Yes.

Q. Did an American register at the Hotel Tampico on that date?

A. Yes.

Q. What was his name?

A. Marvin Salt.

Q. Now did you have occasion to speak to this man?

A. Yes, he spoke to me.

Q. Did you have any discussion with him about him [fol. 1366] wanting to go to a bank?

Mr. Kuntz: I suggest that the witness should be asked what the conversation and discussion was without any leading.

The Court: You were willing to stipulate to this. Now when he asks a leading question you are objecting. I take it you have no objection to this particular evidence——

Mr. Kuntz: I offer to concede and will concede that Morton Sobell was at this hotel in Tampico.

The Court: All right. Don't tell me. I will rule on the objection. Objection overruled.

A. The answer is yes, the following day.

(Marked Government's Exhibits 23-A and 23-B for identification.)

Q. To what bank are you referring?

A. To the Banco Ganadero, in Tampico.

Q. I show you Government's Exhibits 23-A and 23-B for identification, and ask you if they represent the registration card and the hotel bill of this Marvin Salt (handing to witness)?

A. Yes.

Mr. Cohn: We offer them, your Honor.

Q. Do you see this Marvin Salt here in court?

A. Yes, sir; I see him.

Q. Where is he seated?

[fol. 1367] A. He is the third gentleman from this side (indicating).

Mr. Cohn: May the record indicate that the defendant Sobell is identified now as Marvin Salt, your Honor.

May these be received in evidence.

Mr. Kuntz: No objection.

(Government's Exhibits 23-A and 23-B for identification received in evidence.)

Mr. Cohn: May I display them to the jury, your Honor?

The Court: Yes.

(Exhibits handed to the jury.)

Mr. Cohn: (After conference with Mr. Kuntz and Mr. Phillips) The defendant Sobell, your Honor, I have asked him too, and he has conceded on the record that the handwriting in the name Morris Sand on the registration in Vera Cruz, at the Hotel Diligencias, is his; that the handwriting in the name M. Sand at the optical shop in Vera Cruz is his; and that the handwriting on the registration card here from the Hotel Tampico, in the name of Marvin Salt, is his writing, the writing of the defendant Sobell, and that will save us something.

The Court: Very well.

Are you through with the witness?

Mr. Cohn: I have no further questions of the witness.

[fol. 1368] Mr. Kuntz: No questions.

The Court: She may go back to Mexico.

(Witness excused.)

Mr. Cohn: Is this a good time for a recess, your Honor?

The Court: Are we going a little too fast?

Mr. Cohn: No, it is going along fine. We are delighted.

The Court: All right, we will take a recess at this point.

(Short recess.)

The Clerk: Glenn Dennis.

GLENN DENNIS, called as a witnes on behalf of the Government, having been duly sworn, testified as follows:

Mr. Cohn: Your Honor, the name of this witness is incorrectly spelled on the witness list. It is spelled "Glenn Davis" on the witness list. The correct spelling is "D-e-n-n-i-s," in case defense counsel have trouble finding it.

Direct examination.

By Mr. Cohn:

Q. Mr. Dennis, you are an official of C.M.A., the Mexican Airlines; is that correct?

A. Yes.

Q. What is your exact position?

A. Traffic superintendent, in charge of passengers, mail

[fol. 1369] and cargo.

Q. Is that for all of Mexico?

A. Yes.

Q. Does your plane run flights between Mexico City and Vera Cruz and Tampico and then back again?

A. Yes, sir.

Q. Are you the duly authorized sustodian of various records of your airline in Mexico, fully familiar with the manner in which these records are kept in the regular course of business?

A. Yes.

Mr. Cohn: Will you mark these as two exhibits, A and B, please.

(Marked Government's Exhibits 24-A and 24-B for identification.)

Q. Have you produced, pursuant to subpoena, various records from the files of C.M.A.?

A. Yes, I have.

Q. Do those records concern plane flights, one from Vera Cruz to Tampico, on the 30 of July 1950; and the other, a flight from Tampico to Mexico City, on the 2nd, I believe, of August 1950?

A. That is right; yes, sir.

Q. Have you produced, pursuant to subpoena, manifests of these flights?

A. Yes, sir.

Q. What do these manifests customarily contain?

A. The passenger's name, his weight, his baggage and the distance, leg of travel over which he goes.

Q. How is the weight recorded, pounds or kilos?

[fol. 1370] A. In kilos.

Q. In kilos?

A. Yes, sir.

Q. Now, first of all, I will ask you to examine Government's Exhibit 24-A for identification (handing). Is that a manifest, a passenger list of the passengers on the C.M.A. plane from Vera Cruz to Tampico, July 30, 1950?

A. It is, sir.

Q. Does it contain a list of the passengers who traveled on that plane?

A. Yes, sir.

Q. Do you find a passenger by the name of Morton Sobell?

A. Not by that name, no, sir.

Q. Do you find a passenger by the name of N. Sand?

A. Yes.

Q. Does that record indicate that Mr. N. Sand flew from Vera Cruz to Tampico on July 30, 1950?

A. It does, yes.

Q. And is your copy of his ticket stub attached to the passenger manifest?

A. This is the tickets, the actual tickets (indicating).

Q. The actual tickets that were taken up; is that right?

A. Yes, sir.

Mr. Kuntz: I am afraid to offer any concessions any more. I will offer a concession that Sobell, under the name of Sand flew from—where? From Vera Cruz to Tampico; is that it?

[fol. 1371] Mr. Cohn: Yes, that is it.

Mr. Kuntz: And from Tampico to Mexico City.

Mr. Cohn: Under the same name.

Mr. Kuntz: If you say so.

Mr. Cohn: No, I say it is a different name.

Mr. Kuntz: Show it to me.

Mr. Cohn: All right, fine (showing).

Mr. Kuntz: No question about that.

Mr. Cohn: Fine, your Honor.

Now, may 24-B for identification also be received in evidence then, without objection?

Mr. Kuntz: No objection.

(Government's Exhibits 24-A and 24-B for identification received in evidence.)

Q. Am I correct in stating that we have talked about 24-A, which is the manifest of the flight from Vera Cruz to Tampico? Now, 24-B is the manifest of a flight from Tampico to Mexico City on August 2, 1950?

A. Yes.

Q. And it contains a passenger list; is that correct?

A. Yes.

Q. Its manifest, and have you also produced for us a registration—I am sorry, a control card, I believe it is called?

A. Reservations control card.

Q. Reservations control card; is that right?

[fol. 1372] A. Yes.

Q. And that reservations card indicates that a reservation was made in the name of Morton, M-o-r-t-o-n Solt, S-o-l-t?

A. Yes.

Q. On the flight from Tampico to Mexico City, and the passenger manifest carries the name Morton Solt; is that correct?

A. Yes.

Q. Is that right?

A. That is right.

Mr. Cohn: No further questions of this witness, your Honor.

Mr. Kuntz: No cross.

The Court: Step down.

(Witness excused.)

[fol. 1373] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Cohn: May this be marked for identification.

(Marked Government's Exhibit 25 for identification.)

Mr. Cohn: Your Honor, the Government now offers in evidence a record from the Immigration and Naturalization Service of the Department of Justice of the United States, duly and properly authenticated concerning the circumstances of the departure of Sobell from Mexico to the United States.

I will show that to counsel (handling).

(Mr. Phillips and Mr. Kuntz examine proposed exhibit.)

Mr. Phillips: If your Honor please, that is merely a proof of the existence of a paper but not any proof of the fact, and there are numerous statements in this card——

The Court: Well, will you concede that if a representative of the Department of Naturalization and Immigration were called he would testify that that was an entry which was made in the regular course of business and that it was the regular course of business to make such an entry? The weight to be given to it, and so forth, under the statute, is another matter. That is a matter for the jury.

Mr. Phillips: No, I would have to have the man for the purpose of cross-examination.

[fol. 1374] The Court: There you are on a matter of concessions.

Mr. Phillips: I would have to find out how the record was made. I object to it. It is a self-serving declaration on the part of the Government and in fact contains statements here which we dispute.

The Court: I thought that you were anxious to make concessions.

Mr. Phillips: I beg your Honor's pardon?

The Court: Here is your opportunity to make one. Now they have to call a representative of the Department of Justice.

Mr. Kuntz: That is not the purpose of our objection, if your Honor please. I want both your Honor and the jury to understand the nature of our objection. Here is a record produced from the Immigration Department, which I think we can say is a self-serving declaration—it is an arm of the plaintiff in this action.

The Court: That is not a good objection, I want you to know that.

Mr. Kuntz: No, wait——

The Court: Because most of these—this business of self-serving declarations—most of these entries are self-serving in that they are offered for the purpose of aiding the [fol. 1375] Government's case and doing some damage to the defendants' case. That is the purpose of it.

Mr. Kuntz: But the point I am raising here, if your Honor please, is that contained in that card is a notation not about their records, their own records, which would be kept in the ordinary course of business—that I believe—but in regard to what somebody else did, and that if your Honor will only look at the card——

The Court: Well, I assume that what you are saying is so but I want you again to know that there is a statute enacted by Congress that says, in substance, that the mere fact that there may be hearsay in the document is not enough to exclude it. That is something that may go to the weight of it but if it is an entry which is made in the regular course of business, that it is part of the regular course of business to make such entries, even though it might be hearsay, that the record in and of itself is admissible. The weight to be given to it is another question.

Mr. Kuntz: Well, we cannot see our way clear, because

of the statement in the record, to consent to its admission and we therefore object to it.

The Court: Well——

Mr. Cohn: Your Honor——

[fol. 1376] Mr. Phillips: May I add, if your Honor please, in the paper and the card which are now, I think before you, there are statements not of something done by the person who made the record but of something done by others as to which he could not have personal knowledge.

The Court: It is perfectly all right. You take the ordinary police blotter, that is a record that is made by what somebody else has told the policeman and he makes a record of it in the police blotter.

Mr. Phillips: Even that is only admissible for certain purposes.

The Court: Well, the point is this is only admissible for certain purposes.

Mr. Phillips: This is purported to be a record which they are now submitting to be received in evidence for the contents as a fact.

The Court: Well, so is the police blotter but the point is how much weight would be given to it. That is another question.

Mr. Phillips: But if your Honor please——

The Court: Let us not argue it any further.

Mr. Phillips: I simply want it understood.

The Court: I understand.

Mr. Phillips: This is not a record made by the man who [fol. 1377] has made this record, but he is reporting something that somebody else told him as to which——

The Court: I wish you would take a look at that statute. That is not a sound objection to a record made in the regular course of business. I get your point. It doesn't have to be a record made by the individual himself, on what he himself knows; it can be based on what somebody else told him.

Mr. Phillips: Can we say someone in New York can make a record of something that happened in Europe as to which he knew nothing? Would that be admissible evidence?

The Court: If it was part of the regular course of business of that individual to record those statements or those

actions, and if it was part of his regular course to do so, then it would be admissible. Look at the statute. It is very clear.

Mr. Phillips: If he said that somebody told him perhaps it would be that way, but when he states as a fact——

The Court: Mr. Phillips, that is a matter which you can bring out by stipulation or by cross-examination. It is not based on his own knowledge but that doesn't affect the admissibility of it.

[fol. 1378] Mr. Phillips: In the first place, the witness ought to be here so we can examine him.

The Court: When they brought witnesses from Mexico you said it was silly to bring them.

Mr. Phillips: There are differences in weight, are there not?

The Court: Very well.

Mr. Cohn: If I may be heard on this, your Honor: Under Section 1733, Title 28, when we produce a record properly authenticated, under and by virtue of the law as provided by the statute, we are relieved from the requirement of producing the witness through whom the record is to be introduced. I think the mere presence of a seal and proper authentication makes the record admissible.

The Court: There must be some testimony that the record itself that you are seeking to admit was made in the regular course of business.

Mr. Cohn: I haven't examined that question.

The Court: I think you ought to.

Mr. Cohn: I will do that. In the meantime the card has been authenticated. Of course, it is a record kept in the regular course of business at a somewhat distant place. It means we will have to fly somebody up to show that this is a record kept in the regular course of business that was [fol. 1379] sent down here pursuant to subpoena.

The Court: After recess today get some stipulation on it.

Mr. Cohn: Otherwise we will fly a witness down. I want to make a further point. Your Honor may have noted who signed the original of the card at the end.

The Court: Let me see it.

(Document handed to Court.)

The Court: Of course, this is a copy of it.

Mr. Cohn: Yes. That is just another little thing, but if the point is pressed we will get the witness down.

Mr. Kuntz: I don't raise that question about a witness to prove that the card was a card made in the regular order of business.

Mr. Saypol: May I interrupt?

The Court: Just a moment, Mr. Kuntz is talking.

Mr. Kuntz: I objected and I think Mr. Phillips objected to the receipt of the contents of the card because it would be hearsay. It could not be anything——

The Court: Let me understand you. Then I think I can rule on this question now. That is your only objection, is that right, that it is hearsay? You are not objecting that the card, Government's Exhibit 25 was prepared in the [fol. 1380] regular course of business and it was part of the regular course of business to prepare the card which the Government is offering now? Your objection is to the hearsay portion on the card?

Mr. Kuntz: That is my notion of it. Mr. Phillips feels—he goes further than that——

The Court: He will have to go further because otherwise the statute is specific on the subject. I haven't got it before me.

Mr. Phillips: I insist on having the man who made the card so I can examine him, wherefrom he got the information contained on that card; otherwise we are helpless. They could put anything on the card and we wouldn't be in a position to contradict it. It is very clear.

Mr. Cohn: Mr. Phillips may insist that he wants us to produce the man who wrote the card, but I think the Congress of the United States has otherwise provided, and under the statute I think we can produce somebody who can state that it is a record kept in the regular course of business. It might be the person who made up the card——

The Court: We are in agreement on that. What he wants to do is to get from the lips of the witness that he has no personal knowledge of what is contained on the card. He [fol. 1381] is entitled to get that.

Mr. Cohn: All right. We will have the witness up.

The Court: Maybe you can stipulate that the witness who

prepared the card had no personal knowledge, but all right, that is what you will have to do.

Mr. Saypol: In order to keep the trial moving, we will send a plane down and bring the witness up and prove it as we have had to prove other things.

The Court: 25 for identification is still for identification.

(Marked Government's Exhibits 26-A to 26-I.)

The Court: Are they agreed to that?

Mr. Lane: Yes, your Honor. In the interest of saving time I have consulted with defense counsel and we have agreed to a stipulation, if I may read it to the Court and the jury.

The Court: Yes.

Mr. Lane: All counsel have stipulated with Government counsel as follows:

That Mr. R. B. Walklett, if he were to appear and testify on the witness stand would testify as follows:

That he is a representative of the United States Lines, with which company he has been affiliated since 1919——
[fol. 1382] Mr. Phillips: Wait a minute. I didn't listen to the introduction under which Mr. Lane is making this.

Mr. E. H. Bloch: I am sorry, Mr. Lane and I discussed this and we agreed upon it, and I suppose it is true to say—will you take my word that our stipulation here will not harm you in any way?

Mr. Phillips: I just didn't know what Mr. Lane was telling the jury and under what circumstances. All right.

Mr. Saypol: May I be heard, if the Court please?

The Court: Yes. One at a time.

Mr. Saypol: I want my turn. We have this in-again out-again Finnigan situation with respect to concessions. We have just seen it demonstrated a moment ago here with respect to this last exhibit of Mr. Cohn's.

Now Mr. Lane proceeds to read a stipulation obtained by him in good faith with Mr. Bloch, presumably speaking for counsel, and I don't care to have Mr. Bloch's observation on the record to his fellow counsel representing another defendant, giving them his word that in his judgment that testimony doesn't hurt their client.

The Court: No. I think as a matter of fact, I am con-
[fol. 1383] cerned about that statement by you, Mr. Bloch, for this reason; You must be aware of the law, and the law is that once anybody has been shown to be a member of the conspiracy, if the jury finds that anybody has been a member of the conspiracy, the acts of the others done in futherance of the unlawful objective are binding upon any one of the defendants or co-conspirators. So you must bear that in mind.

Mr. E. H. Bloch: I want to explain to the Court so that there won't be any misinterpretation. I don't blame Mr. Saypol getting up and criticizing me. I don't blame the Court for admonishing me. My formulation was bad. What I meant, and let me state it again, is that I believe that we ought not to object to the introduction of this testimony upon the ground that it is secondary evidence and that the witness is not here, that we may not be able to cross-examine.

Mr. Phillips: Let me say for the record, that we don't know what they are talking about now. We were never approached and never asked.

The Court: Do you want to take it up with them? Look at it?

Mr. Saypol: I think if we talk to counsel and counsel make a statement we ought to be free to proceed on the basis of that statement.

[fol. 1384] The Court: No, I don't think you can proceed. It affects all the defendants.

Mr. Saypol: Excuse me, if your Honor please; I thought your Honor was through. I didn't mean to interrupt you.

The Court: No. I say I believe that the evidence affects all the defendants.

Mr. Saypol: I don't mean that counsel should not be diligent to protect their clients, but at the same time I don't propose to display any lack of diligence on my part when one counsel undertakes to evaluate and characterize testimony, as it affects another defendant, because I want to be heard loudly and forcefully on that.

Mr. E. H. Bloch: I don't know how many times I can apologize——

The Court: No, no, no more. Let us not go on with this.

Mr. Lane: There is no objection.

The Court: All right, all agreed.

Mr. Lane: R. B. Walklett would testify, and that is a stipulation, were he in the witness box, that he is a representative of the United States Lines, with which company he has been affiliated since 1919. He is a passenger representative. He can identify the picture of Anatolis Yakovlev [fol. 1385] as the person who purchased a ticket on October 14, 1946 for passage to France. And he will identify the picture on State Department document, Government's Exhibit 15 in evidence, the picture of Yakovlev.

He will further testify that he is familiar with the books and official records of the United States Lines, and he personally had charge of the particular record pertaining to the sailing of Anatoli Yakovlev on the SS. America on December 27, 1946.

He will further testify that Yakovlev came to the office of the United States Lines in New York City in October 1946 and booked passage for sailing on November 14, 1946, which sailing was postponed because of a pier strike to December 5, 1946.

The sailing was again postponed until December 27, 1946, and that on that day Yakovlev and his family, two children and his wife, sailed for France.

He can produce and identify the following documents which we have introduced in evidence as Government's Exhibits 26-A to I inclusive: They include as follows:

(a) A letter dated October 10, 1946 from Yakovlev to United States Lines.

(b) A copy of a letter dated October 15, 1946, to Yakovlev [fol. 1386] from United States Lines.

(c) Copy of letter dated October 29, 1946, to Yakovlev from United States Lines.

(d) An eastbound contract ticket No. E 169377 issued to Yakovlev and family October 14, 1946.

(e) Advice slip for eastbound contract ticket No. E 169377 dated October 15, 1946.

(f) First page of first-class berthing, including name of Yakovlev and family.

(g) The cover of purser's first-class berthing list and page including name of Yakovlev.

(h) Cover of booklet entitled "List of First-Class Pas-

sengers." Also page of booklet including name of Yakovlev. Also page of booklet including deletions.

(i) First page of pamphlet entitled "Who's Who Aboard the SS America," and page including the name of Yakovlev.

He will further testify that the purser's first-class berthing list will show that the Yakovlevs were assigned to Room U-97; their ticket number was 169377; that the rate was $1035; that the party was bound for Russia; that the ticket was tax-exempt; that their New York address was 7 East 61st Street, New York City, and their telephone number was REgent 4-3490; that the party was originally scheduled to [fol. 1387] sail on December 5, 1946.

He would also testify that the blue checks on the purser's first-class berthing list indicate that the Yakovlevs were sailing for a French port, and the documents will also show that Yakovlev was vice-counsel in New York City of the Russian Legation.

(Marked Government's Exhibit 26-J.)

The Court: Mr. Lane, I believe what you could do is to characterize the exhibits and save the jury looking at them.

Am I correct in stating that they are all exhibits which pertain to the application for a ticket and the departure of Yakovlev from the United States?

Mr. Lane: That is correct.

The Court: Commencing with October 1946 and ending with his departure on the SS. America on the U. S. Lines on December 27, 1946.

Mr. Lane: That is correct, your Honor.

If the Court please, may I point out one or two things here? In the first-class berthing list you will note the designation room as U-97, and under the list of names, it contains the names of Anatoli Yakovlev, Mrs. Anatoli Yakovlev, Master Paul and Miss Victoria, their children, five years old, as indicated on the first-class berthing list, and it also shows [fol. 1388] here that in that particular room the Yakovlevs are listed as USSR, Vice-Counsel, New York, and it gives the rate, the ticket number, and also the place where they are returning, and you will note that on that is Russia. In Who's Who, which is a listing of the detailed information of certain passengers, Room U-97 is Mr. Anatoli Yakovlev and

family and it has the notation Vice-Counsel of the USSR, New York.

The letter which I have referred to of Yakovlev to Mr. Walklett of the United States Lines reads as follows:

(Mr. Lane reads exhibit to the Court and jury.)

[fol. 1389] The Court: Are you through with that phase of it?

Mr. Lane: Yes, your Honor.

The Clerk: Lan Adomian.

LAN ADOMIAN, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Lane:

Q. Mr. Adomian, where were you born?
A. Russia.
Q. When?
A. In 1905.

The Court: Speak up, Mr. Adomian, we can't hear you.
The Witness: 1905.

Q. Are you an American citizen?
A. Yes, sir.
Q. When were you naturalized?
A. 1940.
Q. When did you first come to the United States?
A. 1923.
Q. Were you employed by the Amtorg Trading Corporation in New York at one time?
A. Yes.
Q. Will you tell us when?
A. In 1940.
Q. In what capacity?
A. As a translator.
Q. Do you know one Anatoli A. Yakovlev?
A. Yes.
Q. When did you meet him?

A. Around 1944.

Q. When did you meet him?

A. In 1944.

Q. How long a period of time did you know him?

[fol. 1390] A. Off and on for about two years, I would say.

Q. Now did you ever see him in the Soviet Consulate, in New York City?

A. I did.

Q. Do you know what his occupation was?

A. Vice Consul.

Q. Did you have some reason for going to the Soviet Consulate in New York City at that time?

A. Yes, I did.

Q. Will you fix the time when you saw Mr. Yakovlev in the Consulate, Soviet Consulate, in New York City?

A. I can't fix it exactly. I would say it would have been either the summer or fall of '44, I think.

Q. Had you seen him before that?

A. Yes.

Q. In the Soviet Consulate?

A. Yes.

Q. Did you go there on any particular business?

A. Yes, I wanted a visa to go to the Soviet Union for a visit.

Mr. E. H. Bloch: I am awfully sorry. Will you ask the witness to speak up, please?

The Court: Will you repeat that answer.

(Answer read.)

Q. When is the last time that you saw Yakovlev?

A. I would say some time in '46.

Q. I show you Government's Exhibit 15 in evidence and I ask you to look at the picture on that exhibit and tell me if you can identify that individual (showing).

[fol. 1391] A. That looks like a picture of Mr. Yakovlev.

Q. Well, is it Yakovlev?

A. Yes.

Mr. Lane: May the record indicate that the witness has identified the picture on Government's Exhibit 15 as Anatoli Yakovlev.

There will be no further questions, your Honor.

Mr. E. H. Bloch: No questions on behalf of defendants, your Honor.

The Court: All right, no cross.

(Witness excused.)

COLLOQUY BETWEEN COURT AND COUNSEL.

Mr. Saypol: We now have to proceed to bring a witness on from Laredo. We have another witness. Would this be an appropriate time to recess?

The Court: You say you have got to bring a witness from Laredo?

Mr. Saypol: Oh, yes.

The Court: You will have the witness here in the morning?

Mr. Saypol: By every possible means.

The Court: Very well.

Mr. Saypol: From Laredo, Texas.

The Court: Very well.

Then I take it that the Government will probably rest some time early tomorrow?

Mr. Saypol: That is my present expectation.

[fol. 1392] The Court: All right, I want the defense to make arrangements accordingly.

Mr. E. H. Bloch: Before the Court adjourns may we come up to the bench?

The Court: Yes.

The jury is excused until 10:30 tomorrow morning.

(The jury left the courtroom.)

(The following proceedings were had in the absence of the jury, at the bench:)

Mr. A. Bloch: I want to put on the record that last Friday, in answer to a query made by the Court, Mr. Saypol said that it would take him four to five days to complete his direct case, and again this morning Mr. Saypol positively stated that he would require all of Thursday to complete his case.

I also want the record to note that of the three days defense counsel had between Friday and Tuesday morning, two of those days, Saturday and Sunday, the defendants were not available to them for the purpose of going over

the Government's witnesses' testimony, which we think is fatal——

Mr. Saypol: You do not want to go so far.

Mr. A. Bloch: —is vital to the presentation of the defendants' defense.

[fol. 1393] The Court: Well, of course—are you finished?

Mr. A. Bloch: No. I just want to say that we have allocated the time that we thought we had at our command to do certain things in connection with the defense, and that we have not had the time to go over the testimony of the Government's witnesses so as to be able to go on tomorrow with the defendants' case, and I therefore must respectfully ask that a reasonable time be given defense counsel to start with their defense.

Mr. Saypol: I take it that there can be no criticism of me for having proceeded expeditiously. I thought I had made arrangements, or made a request that your clients be made available by the marshal on Monday.

Mr. A. Bloch: Yes, they were available yesterday, from 10 o'clock in the morning to five.

Mr. Saypol: Nobody did ask me, not that I considered it my obligation but nobody did ask me about the availability of the defendants for counsel over the week end. If they had—and it is not my problem but I still would have extended myself to see that they had access.

Mr. A. Bloch: As I understand the rules of the House of Detention, both men and women, they prohibit anybody [fol. 1394] from making any——

The Court: I could have made arrangements if the request had been made of me but nobody did.

My recollection is that when we adjourned last Friday I said up here at the bench, and I pointed directly at your son, Mr. Bloch, Jr.—I said, "You have a long week end. I want you to start working on your defense, I want you to start working with your clients. I want this case to proceed with dispatch."

Mr. A. Bloch: But we did work on the defense.

Mr. E. H. Bloch: We worked hard.

The Court: All right, and you did work hard. You did work Saturday and Sunday and you did utilize it. The only thing was you did not talk to your clients.

I will now order that their clients be made available for as long as they need them today and tonight.

Mr. Saypol: They have been right along, if your Honor please.

The Court: I don't want them hauled back to the House of Detention at five o'clock.

Mr. Saypol: You should make that direction to the marshal.

The Court: I will.

Mr. Saypol: I do not think it requires it.

The Court: Well, whether it does or not, I think the [fol. 1395] fault lies with the fact that you did not request Mr. Saypol or me to have them available. The chances are you did not need them, you were doing your own office preparation Saturday and Sunday.

Mr. A. Bloch: That is correct.

The Court: And you had all day Monday.

Mr. E. H. Bloch: We were with them.

The Court: I think you had an unusual amount of time which ordinarily isn't given to defendants in this case.

Mr. E. H. Bloch: Except that this is a pretty long prosecution.

The Court: It is rather short—much shorter than anticipated; only a little over two weeks.

Mr. A. Bloch: Five or six hundred pages of testimony.

The Court: And furthermore you have been with your client every day right along. I am sure you have discussed the evidence as it went in.

Mr. E. H. Bloch: We have discussed part of the evidence already.

The Court: It is not a case of discussing it anew.

Now your criticism of Mr. Saypol about what he said this morning——

[fol. 1396] Mr. E. H. Bloch: It is not a criticism.

Mr. A. Bloch: I am not criticizing anybody nor am I criticizing the Court.

The Court: All right, now the point is this: Why Mr. Saypol said it would take all day Thursday, I don't know. The only conclusion is that he saw his case concluding and he decided to shorten it some more.

Mr. A. Bloch: Because we conceded certain things.

The Court: Certainly you are not now going to take the good effort of the Court in constantly attempting to keep you advised, which many Judges don't do, as to when your case is going to begin. They don't even bother asking the Government, "When are you going to finish"? They finish and you start, and the mere fact that I constantly probed "When are you finishing, when are you finishing"? so that you would know that the end was coming near, we are not going to say that that caught you flat-footed; if anything, it should have given you ample opportunity to prepare.

Now you have put something on the record. You have something in mind in putting it on the record. You do not want to characterize it as criticism. No matter what you characterize it as, there is the reply to it.

Mr. A. Bloch: The reason I put it on the record is to [fol. 1397] have you give us a reasonable time. I think you have almost done it, but almost.

The Court: I think you have it already.

Mr. A. Bloch: If you had given us at least until tomorrow, two o'clock or 2.30 so that we would have all tonight and a half day tomorrow.

The Court: All right, you may consider that your defense does not go on until after the luncheon recess tomorrow. Is that satisfactory?

Mr. A. Bloch: Yes, that will be all right.

The Court: Is that satisfactory?

Mr. E. H. Bloch: Yes.

Mr. A. Bloch: Yes, it is.

Mr. E. H. Bloch: Now if the Court please, I am very glad that you said you would direct the marshal to keep them here at night.

The Court: Yes.

Mr. E. H. Bloch: Because during court days we get through here at half past four and at five o'clock they take them away.

The Court: I will do that.

Now off the record.

(Discussion off the record.)

The Court: Now this is a direction to the marshal.

[fol. 1398] Will you see that their clients are left right

here in the court house until the lawyers are through with them? I don't know what time it is going to be but arrangements will have to be made, and that will have to go now until the case is over.

So please tell whoever is in charge that I have so directed.

Deputy Marshal: All right.

The Court: All right.

Tomorrow at 10.30.

(Adjourned to March 21, 1951, at 10:30 A. M.)

[fol. 1399] New York, March 21, 1951; 10:30 o'clock a. m.

Trial resumed.

OFFERS IN EVIDENCE

Mr. Saypol: May I address the Court?

The Court: Yes.

Mr. Saypol: Pursuant to the provisions of Section 1733 of Title 28, I offer in evidence Government's Exhibit 18-A for identification.

Do you care to see it?

Mr. Phillips: For identification you can offer anything.

The Court: He is offering it in evidence.

Mr. Phillips: Oh, he is offering it in evidence. Let's see it.

The Court: He is offering 18-A marked for identification in evidence, but I don't think it should be under 1733, Mr. Saypol; it should be under 1732.

Mr. Saypol: Either 1732——

The Court: 1733 pertains to accounts and transcripts of proceedings. This is an entry made in the regular course of business and so it should be under 1732. That portion [fol. 1400] of 1733, I think you have reference to, permits authenticated copies to go in, in place of the original.

Mr. Saypol: As to this, if your Honor recalls, foundation was laid in the testimony of——

The Court: Yes, I remember that.

Mr. Saypol: I have asked for a concession of Mr. Phillips. He has refused.

Mr. Phillips: Just a moment. I object to his stating in court his request for any concessions.

The Court: All right, all right; just disregard that, ladies and gentlemen; just disregard that.

Mr. Saypol: The part that I intend to offer and use is the back sheet of the four-page document——

The Court: Mr. Phillips, please keep your voice down, will you?

Mr. Phillips: I beg your pardon?

The Court: Would you keep your voice down. I hear you whispering up here.

Mr. Phillips: I didn't know it was so loud, your Honor.

The Court: All right.

You said the back sheet?

Mr. Saypol: The back sheet particularly; that is all I require, and that portion, of course, as to which there has [fol. 1401] been a concession, that it bears Sobell's signature.

Your Honor may recall yesterday in the course of Colonel Cobb's testimony, the Court directed an inquiry to me as to the purpose of this material when I offered it, and I am prepared to state, if the Court so desires.

The Court: Well, we will see in a moment whether or not there is any objection.

Mr. Phillips: Objected to on the ground there is no foundation laid for the introduction of these papers. There is no connection whatsoever between these papers and the offense which we are trying in court now.

The Court: Well now, let me understand. Do you object because it is a photostatic copy?

Mr. Phillips: No, I do not object to anything because it is a photostatic copy. That you understand.

The Court: In other words, when you say "no foundation has been laid", will you be specific on that?

Mr. Phillips: It has not been shown that this paper in any wise relates to the subject matter of the issues.

The Court: I see. You are objecting on the grounds of relevancy.

Mr. Phillips: It is irrelevant and incompetent.

[fol. 1402] The Court: Very well. Now I will hear you on it, Mr. Saypol.

Mr. Saypol: I believe a foundation has been laid. The particular object for which I offer this is proof that the defendant Sobell was never——

Mr. Phillips: Just a moment. I object to counsel stating what his object in offering it is, because if he doesn't succeed in having it offered, the statement he makes may be worse——

The Court: Come up to the bench.

Mr. Phillips: —than the paper itself.

(The following took place at the bench, not in the hearing of the jury:)

The Court: I want to get one thing straight for the record now. You are not objecting because this is a photostatic copy; right, Mr. Phillips?

Mr. Phillips: Yes.

The Court: You are not objecting because it is not an entry made in the regular course of business or made from the regular files of Selective Service?

Mr. Phillips: No, I am assuming that is correct. I am taking their word for it.

The Court: You are objecting on the ground of relevancy and competency?

[fol. 1403] Mr. Phillips: Yes.

The Court: All right.

Let me hear why it is relevant.

Mr. Saypol: I want to use this to prove that the defendant was never in the Army, never was inducted. There was testimony yesterday by Mr. de Los Rios as to a conversation with him in Mexico City in which he said that he had had one experience and he did not want to be taken in the Army, that the military police were looking for him.

This record shows that consistently, at the time when he first came before the Board in July of 1943 until August 5, 1946, he was classified and reclassified, most of the time, in a deferred classification, and finally in 4-A, which indicates that he was never inducted.

The Court: Let me see the back sheet.

(Mr. Saypol hands to Court.)

The Court: I do not want to see any other statements here that in any way may be prejudicial.

Mr. Kuntz: There is some statement there about a neurosis.

The Court: Where, on the back page?

(After examining.) No, he is just offering the back *back*.

[fol. 1404] Mr. Phillips: No, he is offering the whole thing.

Mr. Phillips: No, I said the back page.

Mr. Kuntz: I did not hear it either.

Mr. Phillips: Just a moment. Then of course it is improper.

The Court: Why?

Mr. Phillips: To offer one page of a whole record?

Mr. Saypol: Where did you get that rule?

Mr. Phillips: Just a moment. That is obvious.

The Court: You can offer the balance.

Mr. Phillips: I want to say this, I am awfully sad that I am the only man in this place whose voice carries, but I don't mean it. I cannot help it. I am born that way. I talk with a distinct manner and method.

The Court: Wait a minute. He can offer any part of an exhibit and you can offer the balance of it, there is no question about that, and as a matter of fact, leaving out any portion that you contend is prejudice about neurosis.

Mr. Kuntz: We contend that the entire record is prejudicial.

The Court: Very well.

Mr. Kuntz: First of all, the ground that Mr. Saypol [fol. 1405] gave that a certain witness reported a conversation is certainly not a foundation.

Secondly, that the witness did not state that Sobell said that he was or was not in the Army. Sobell, according to the witness, is supposed to have stated that he was through one war. He didn't say anything about his having been in the Army.

The Court: Well, that may be so. I am not sure whether he used that language but there is an inference to be drawn from it that he served in the Army.

Mr. Kuntz: No, the inference was——

The Court: What is he running away from?

Mr. Kuntz: Because he saw the war coming.

Mr. Saypol: Yes, but he was deferred.

The Court: If there was a war he is in a country that is going to be in another war. He is in Mexico.

Mr. Kuntz: Who said so? He might go into South America.

The Court: How is he running away from a war?

Mr. Kilsheimer: Your Honor, he said he was afraid of returning to the Army (handing record to Court).

The Court: "He told me he was worried because—he said he was afraid to return to the Army, the U. S. Army [fol. 1406] since he already has seen a war, has experienced a war."

Mr. Saypol: What page is that on, Mr. Kilsheimer?

Mr. Kilsheimer: 1349.

Mr. Saypol: Your Honor, let the record show that page.

Mr. Kuntz: I do not understand the theory of the offer. If Mr. Saypol said that Sobell on the witness stand made such a statement and he wanted to contradict Sobell, that is one thing, but who is it contradicting, the testimony of his own witness?

The Court: No, it is not contradicting the testimony of his own witness. He is contradicting a statement made by Sobell to one of his witnesses.

Mr. Kuntz: No, no. He is contradicting a statement testified to by his own witness.

The Court: All right.

Mr. Kuntz: It may be true or may not be true.

The Court: Well, I don't agree with you.

Mr. Phillips: Judge, is there anything clearer in the laws of evidence than that?

The Court: Than what?

Mr. Phillips: Mr. Saypol's witness swears that someone, somewhere, told him something.

[fol. 1407] Mr. Saypol: Not "someone". It is a defendant.

The Court: I will tell you, the whole record, the whole file as a matter of fact is properly admissible as an entry made in the regular course of business. Here is a case right in our circuit, United States v. Ward, 173 Fed. (2d) 628, an opinion by Judge Frank—Learned Hand sat with Judge Chase, too.

> "Defendant also contends that records taken from the files of the Office of Selective Service Records were inadmissible. They were properly authenticated, being official records identified as such by their custodian."

And he cites Wigmore.

> "The main objection to the admission of these records is that the witness did not make the records and did not know when or by whom these particular records were made; in effect, it is that the entries in the files are hearsay. The government argues that this objection is met by its compliance with the 'entries in the regular course of business' statute, 28 U. S. C. A. Section 1732 * * *. Whether there was a sufficient foundation for admission under this statute we need not decide, for, to the extent the entries were hearsay, [fol. 1408] they were admissible as 'official statements' made in the course of the entrants' official duties as employees of the United States."

You have the same thing.

Mr. Kuntz: That is not the same thing.

Mr. Phillips: We are not making that objection.

The Court: You are making the objection on the ground that it is not relevant.

Mr. Kuntz: Yes.

Mr. Phillips: Yes, and prejudicial.

The Court: I understand.

Mr. Kuntz: Secondly, it is offered to contradict——

The Court: I get your point.

Mr. Kuntz: —the testimony given by their witness.

The Court: That is correct.

Mr. Kuntz: And third, it has nothing to do with the crime.

The Court: Now I think it is relevant, No. 2. I believe that the purpose is not to contradict the Government witness; the purpose is to contradict your client's statement.

Mr. Kuntz: Has our client said it?

The Court: As testified to by a Government witness. Right on the state of the record right now, that testimony [fol. 1409] stands. He has not been cross-examined. His story stands that your client told him the very thing that was just read into the record before, and that's it.

Mr. Saypol: I have a third basis for offering it——

Mr. Phillips: Just a moment.

Mr. Saypol: Let me supplement my position, if I may, and then you can argue. I have an additional basis for

offering this on the question of relevancy. That goes to the purpose of Sobell's flight to Mexico, which is part of my proof.

The Court: You mean on the fact that he was not about to be put in the Army, Mr. Saypol?

Mr. Saypol: Certainly.

The Court: That he was classified in a deferred classification?

Mr. Saypol: That is so.

The Court: I would say it is relevant on that, too.

Mr. Phillips: Let me say a word, Judge. Do I understand the ruling to be that a witness put on by the prosecution who testifies to a conversation with the defendant, that now it becomes relevant to introduce proof that the [fol. 1410] defendant lied to that man who is a witness for the Government in that conversation? Is that what this ruling is, as I understand it?

The Court: The ruling is as I made it, and I don't prefer to give it in your form of characterization.

Mr. Phillips: You haven't made it yet.

The Court: As I indicated I would make it.

Mr. Phillips: I see. Here is the way as I understood it, the way it seems to me that ruling would amount to.

The Court: I will tell you—maybe you can avoid all this. Would you stipulate this?

Mr. Phillips: Stipulate what?

Mr. Saypol: That he was not in the Army.

The Court: That he had never been in the Army.

Mr. Saypol: That is what I asked for this morning.

Mr. Phillips: I have been determined not to stipulate that, Judge.

The Court: Will you stipulate that he was not in the Army and that he was in a deferred classification?

Mr. Phillips: As senior counsel for the defendant, I decline to stipulate.

Mr. Saypol: That is what I asked for.

[fol. 1411] Mr. Phillips: I have already made up my mind that there was too much stipulation in this case, to make the path of the prosecutor too easier.

The Court: I want to tell you something, Mr. Phillips—off the record.

(Colloquy off the record.)

Mr. Kuntz: I have another ground, it seems to me, that might be available to us, which I urge, that in effect the defendant is being compelled to be a witness against himself, which certainly he cannot be compelled under our law.

The Court: If there was any basis to that statement you could never offer a record——

Mr. Saypol: You could never prove a case.

The Court: —of a defendant or offer any admissions that a defendant made.

Mr. Phillips: If this is admitted——

The Court: Now wait. Here is what disturbs me here. Where is there anything on the last sheet? Is there a signature?

Mr. Saypol: There has been a concession that that has been signed.

The Court: There is no question about the last sheet being part of his Selective Service record.

[fol. 1412] Mr. Kuntz: We are not raising a technical question like that.

The Court: All right, I am going to admit it. You can offer anything else.

Mr. Phillips: Let me make a final statement for the record. This is objected to on the ground that this is tantamount to the Government attorney putting a witness on the stand, having that witness, in reply to the Government attorney's question relate a conversation between that witness and a defendant, relate that conversation in allowing the Government to introduce proof that in that conversation the defendant did not tell the truth to the Government witness.

The Court: No, it does not amount to anything of that character, and you cannot characterize it quite as broadly as that. In the first place, it is not the Government who answers the question, or the Government attorney.

Mr. Phillips: It is——

The Court: Wait a minute. It is the witness who gives the testimony. The Government cannot help the fact that the witness gives this type of testimony——

Mr. Phillips: The Government——

The Court: Wait a minute; let me finish.

[fol. 1413] Mr. Phillips: Excuse me.

The Court (Continuing): —and his testimony stands on the record unrefuted. You did not cross-examine him. It is there. It must be accepted if they believe him.

Now when the witness gives his full story, part of which may be beneficial to your client, such as that he was leaving the country for an excuse, which your client gave from his own mouth to this witness, and that is that he had been in the Army and that he did not want to go through another war, the Government, in accordance with its theory for the admission of that proof in which to show flight, because of his commission of the crime charged, has a perfect right to show that he wasn't in Mexico City because of some other reason; otherwise the entire topic becomes irrelevant; the entire topic of flight becomes irrelevant and is directly admissible.

Mr. Phillips: Very good. Therefore we have this situation, that the Government attorney, in introducing the witness asks that question, "What conversation did you have with the defendant?" He therefore gets a conversation favorable to the defendant in that answer, and then not only [fol. 1414] nullifies that conversation but makes out the defendant to be a liar against himself——

The Court: That is right.

Mr. Phillips: —by introducing testimony——

The Court: Correct, but that is all part of the Government's case. He contends that your client was lying to this man.

Mr. Phillips: But the defendant did not say it. This man says the defendant said it.

The Court: All right, where is the proof that he did not say it?

Mr. Phillips: Where is the proof that he did say it?

The Court: This man.

Mr. Saypol: Will you just let me get this over——

Mr. Kuntz: May we have an exception?

The Court: You do not need it.

Mr. Saypol: Wait before you take it. There is something I want to add to my offer. In order to obviate the question raised by counsel with regard to neurosis, I suggest that these first pages be stapled together. I made my offer as

to the last page. I also make my offer as to the page as to [fol. 1415] which there has been a concession that it had been signed by him.

Mr. Kuntz: Let us say for the record——

Mr. Saypol: And this is also offered, the bottom of page 6 which relates to military service and as to which there is no answer, and as to that part his signature controls. That is the whole point (handing to Court).

Do you see what I refer to? I suggest if it were stapled, the balance of it stapled together, it can be submitted in that form to the jury.

The Court: You mean beginning with "Citizenship"?

Mr. Saypol: I am not particularly concerned with that, although I see no harm.

The Court: In other words, you are offering the last three pages?

Mr. Saypol: Yes. They are numbered at the bottom, if your Honor desires to examine it, or to make reference to it when you make your ruling, if necessary.

The Court: Well, there has been a concession as to the signature already on page 7, and there are no other questions and answers on page 7, so there is nothing prejudicial there. The signature is relevant.

Mr. Saypol: There is a concession as to that.

The Court: On page 6 all you have is that he was born in [fol. 1416] New York City, the date of birth, and that he is a member of the white race, and that he has not been convicted of any felony, and there is no answer to the matter of military service.

Mr. Saypol: That is right.

The Court: And on page 7 you have the classifications by the Board.

Mr. Saypol: I refer to the classification.

The Court: All right, I will admit pages 6, 7 and 8 of Government's Exhibit 18-A for identification.

Mr. Saypol: Would your Honor suggest—will your Honor approve my suggestion——

The Court: Yes.

Mr. Saypol: ——that the balance be stapled?

The Court: Yes, unless the defendant himself ask that the rest be opened.

[fol. 1417] (The following took place in open court.)

(Pages 6, 7 and 8 of Government's Exhibit 18-A for identification received in evidence.)

Mr. Saypol: May I proceed to read selected portions to the jury?

The Court: I might say to the jury that I have admitted a part of the Selective Service questionnaire of Morton Sobell into evidence. Now the fact that Mr. Sobell did not serve in the Army should not in any way prejudice you in your deliberations in this case. However, it is admitted on the theory that when Sobell is alleged by the witness Rios to have said that he had left the country because he had served in the United States Army and had been through one war and didn't want to go through another war, the Government contends that that was not the reason that he had left the country. Solely upon that basis and basis alone is this portion of the Selective service questionnaire admitted.

Mr. Phillips: Of course, we take exception to your Honor's statement.

The Court: Very well.

Mr. Phillips: As not entirely accurate.

The Court: What isn't accurate?

Mr. Phillips: I think the statement of the witness' testimony was not accurate.

[fol. 1418] The Court: May I have that testimony again so we will have no mistake about it?

On page 1349 of the witness Rios' testimony:

"Q. Was there anything more said in the course of that conversation? A. He told me he was worried because—he said he was afraid to return to the Army, the U. S. Army since he already has seen a war, has experienced a war."

Mr. Saypol: Mr. Schaefer, I think it was the Court's direction that this part of the exhibit be stapled together (indicating). You might do it at the bottom also so it won't fall apart.

Ladies and gentlemen, Government's Exhibit 18-A in evidence is the Selective Service questionnaire of Morton Sobell. At page 7 I direct your attention first to that por-

tion at the bottom which is labeled Registrant's Affidavit in which Morton Sobell says "I, Morton Sobell do solemnly swear that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read or have had read to me the statements made by and about me and that each and every such statement is true and complete to the best of my knowledge, information and belief." It is signed by Morton Sobell, sworn to by him before a notary public on the 2nd day of April, 1941.

[fol. 1419] Now, immediately preceding that on page 6, series 12 of this questionnaire refers to military service and under the instruction it is required that prior military service be described and that space is left blank; so there was no prior military service.

Now, on the last page are the minutes of the actions taken by the local board in respect to classification and induction of the registrant and you will find that starting on July 20, 1943 Sobell was classified in 2-A and those classifications of that type continued. He was before the Board and not in service up to October 9, 1945 when he was classified 4-F, and finally again on August 5, 1946 on the margin reading lengthwise he was again classified 4-F.

The Court: I might say to the jury, just look at pages 6, 7 and 8.

[fol. 1420] The Clerk: Elizabeth Bentley.

Elizabeth Bentley, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Miss Bentley, what has been your education?

A. I have an A. B. degree from Vassar College and a Master's degree from Columbia University, and I had a year's study in Italy.

Q. When did you graduate from Columbia?

A. I received my degree in January 1935.

Q. About that time did you join the Communist Party?

A. Yes, I joined——

Mr. E. H. Bloch: Objected to as incompetent, irrelevant and immaterial, remote to the issues in this case, and the introduction of this evidence can only serve to introduce the subject matter foreign to the issues.

The Court: I assume that this is the causal connection that we have been talking about between the membership in the party and intending to give an advantage to a foreign government, to wit, the USSR, as charged in the indictment.

Mr. Saypol: That is so, your Honor.

The Court: Overruled.

[fol. 1421] Mr. E. H. Bloch: I respectfully except.

Q. Will you tell us now when you joined the Communist Party, Miss Bentley?

A. Yes, in March 1935.

Q. What part of the party or what unit or what section did you join?

A. Well, I joined what was then Unit 1 of the Harlem section, New York district, of the Communist Party.

Mr. E. H. Bloch: I am sorry, but so that I don't get up and object to each and every question about Communist activities, may I have a continuing objection to this entire line of questioning concerning both the witness's purported affiliation with the Communist Party, as well as any other activities of the Communist Party, unless it is directly related to the defendants Rosenberg?

Mr. Saypol: That is what we are trying to prove.

Mr. E. H. Bloch: I understand. I just want to have my continuing objection and the theory of my continuing objection, so that I don't interrupt you, Mr. Saypol.

The Court: Overruled.

Mr. Saypol: Now, Mr. Reporter, will you be good enough to re-read the last question, and we will have the witness answer.

(Question and answer read.)

Mr. Saypol: We have an answer.

[fol. 1422] Q. How long did you continue as a member of that unit?

A. I was a member of that unit off and on, up until 1938, with brief periods when I shifted to a Home Relief Bureau unit and to a unit in the R. H. Macy Company.

Q. In that interval between 1935 and 1938, will you be good enough to describe for us what the activities were of one like you as a member of the Communist Party in the particular section or unit in which you were active?

Mr. E. H. Bloch: If the Court please, it is the "one like you," in addition to my general objection; I object to the form of the question.

Q. All right, I withdraw it and modify it to the extent that I shall ask you that you tell us what your activities were as a member.

A. Well, I belonged to what is technically called "a shop unit." That is a unit which is organized on the basis of where you work or where you study. I was then at Columbia University. That meant that we were a bit further underground than the street units which went around distributing Daily Workers. Our work consisted of paying our dues; reading Communist Party literature; and of carrying on Communist Party activities, such as putting out a Communist Party shop paper, infiltrating the Teachers College newspaper there, so that we could influence its policies; of [fol. 1423] infiltrating various religious and cultural organizations on the campus. It was that type of thing.

Mr. E. H. Bloch: Now I move to strike out the word "underground" from the witness's testimony.

The Court: All right, strike it out.

Mr. E. H. Bloch: If the Court please, I am sure that you understand the specific ground of my objections when I make them. It is in addition to the objection, substantively, or going to the substance of this entire line of questions.

The Court: All right.

Q. Now when you refer to the underground, is that a distinguishing feature of the type of activity that you have described to us in which you were engaged?

Mr. E. H. Bloch: Now, if the Court please, do I understand that you overruled my objection?

The Court: I had stricken that word out.

Mr. E. H. Bloch: Yes, I object to the form of the question.

The Court: Maybe there is some other point here now, I don't know.

Mr. Saypol: I beg your pardon.

Q. In July of 1938 did you obtain other employment?

A. Yes. At that time I got a position doing research work and secretarial work with the Italian Library of In-

[fol. 1424] formation.

Q. What kind of an agency, what kind of an entity was that? What were its activities?

A. That was the American division of the Italian Propaganda Ministry.

Q. Did it have any governmental connection?

A. Oh, yes. It was a part of the Italian Government at that time, and, in fact, did register under that Foreign Agents' Registration Act.

Q. At the same time did you continue your membership in the Communist Party?

A. Yes, I did.

Q. That is while you were employed in that Italian governmental agency?

A. Oh, yes, I did.

Q. About that time did you know one F. Brown?

A. Yes, I met Mr. F. Brown when I took the position with the Italian Library. I went direct to the ninth floor of the Communist Party in New York. The ninth floor is where the then Central Committee members were; and I spoke——

Q. You mean the headquarters of the party here in New York?

A. That is, the headquarters of the New York district is on the fifth floor, and the ninth floor is the national headquarters.

Q. And who is Mr. F. Brown?

A. Mr. F. Brown, whose real name was Ferruccio Marini, was probably the leading Italian Communist in this country at that time.

[fol. 1425] Mr. E. H. Bloch: Oh, I object to that.

The Court: Let's strike that.

Mr. E. H. Bloch: In addition to the objection that I have to the general line of testimony, I would like to record my

objection at this time, because of the formulation of this last question, as well as the anticipation that there may be further questions about this line, upon the ground that this witness has not been qualified to be an expert on the Communist Party organization.

The Court: That is exactly what Mr. Saypol, I take it, is trying to do.

Mr. E. H. Bloch: I mean up to now, you see, he hasn't done it. I think he ought to do it, if that is the object of the testimony.

The Court: He is trying to do it. How can he do it unless you concede it?

Mr. E. H. Bloch: I certainly will not concede it.

The Court: All right.

Mr. E. H. Bloch: I will not concede it because I don't know, your Honor.

The Court: Very well.

Q. From your experience as a member of the party up to that time, did you have knowledge of Mr. Brown's position in the Communist Party as an official?

[fol. 1426] A. Yes, I was told just previous to that what his position was.

Q. What was it?

A. His position then was——

Mr. E. H. Bloch: Pardon me, Miss Bentley. I am sorry. I didn't want to disturb you but I was going to get up as long as you stopped. I apologize. I would like to object now, your Honor, upon the additional ground that any conversations had by this witness with others outside the presence of these defendants——

The Court: He hasn't asked for conversations.

Mr. E. H. Bloch: She is stating it, your Honor.

The Court: She is stating what the position of a man is.

Mr. Saypol: On the basis of knowledge.

The Court: On the basis of knowledge.

Mr. E. H. Bloch: No, but I think if your Honor will read her last few words you will find that she is now attempting to give a conversation with a Mr. Brown. Now, if I am mistaken I will withdraw that specific objection but——

The Court: Don't give us any conversation with Mr. Brown, Miss Bentley.

The Witness: I wasn't, your Honor.

Mr. Saypol: I want to say this: Mr. Bloch is distinctly in [fol. 1427] error when he says that Miss Bentley's testimony, what she is telling us, is based on conversation with Mr. Brown.

The Court: I think Mr. Bloch, Jr., was talking to Mr. Bloch, Sr., and didn't hear the question at that time. He didn't ask for conversation.

Mr. E. H. Bloch: But there was something about what she was told.

The Court: No.

Mr. E. H. Bloch: And, you see, if she was told——

The Court: All right, don't argue the point. Go ahead.

Q. Once again, on the basis of your activities, as you have described them, as a member of the party, your observations, did you have knowledge of the stature or the status of Mr. Brown in the Communist Party?

A. Yes, I did.

Q. Who was he? What was his position?

A. His position in the Communist Party was, as I was told, was to handle the Italian Communist activities in this country and abroad.

Q. As a result of this——

Mr. Bloch: Now, I am sorry, Mr. Saypol. Maybe we [fol. 1428] ought to clarify this. Then I won't pop up and make objections, because if I am overruled——

The Court: You were objecting to her saying "as I was told."

Mr. E. H. Bloch: That is correct.

The Court: All right.

Did you know of your own knowledge?

The Witness: What do you mean, from my own knowledge?

The *Witness*: Did you know from your own knowledge and from your own observations, without somebody else telling you, what position he occupied?

Q. Did you see him at headquarters?

A. Most certainly. He had an office on the ninth floor. I didn't realize that is what you were referring to.

Q. Did he have an office and did he send for people and did he give them orders in your presence?

A. Of course, he had an office on the ninth floor, not too far from Earl Browder, down the hall a ways from him. He was treated as an important person; he called people in and gave orders. Is that what you mean?

Mr. Saypol: That is what Mr. Bloch wants, I take it.

Mr. E. H. Bloch: I don't want it. I just want competent evidence.

The Court: He doesn't want anything.

[fol. 1429] Mr. Saypol: Excuse me. I mean, that is what I want, but I am afraid Mr. Bloch doesn't want.

Mr. E. H. Bloch: Now, Mr. Saypol, I don't think——

The Court: All right, no by-play, gentlemen. Let's go.

Q. Now, then, having established Mr. Brown's stature—what did you say his name was, his real name?

A. Ferruccio Marini.

Q. You say you went to his office in the Communist Party headquarters and you had a conversation with him; is that correct?

A. That is correct.

Q. As a result of that conversation, did you change the form of your activities, as a member of the Communist Party?

A. Yes. I went, as it was termed in the party, underground and I no longer attended any unit meetings. If I met fellow Communists on the street, I was to pretend I didn't know them. If they asked me what I was doing, I was to dodge their questions; if necessary, I was to tell them that I had walked out of the Communist Party. I was to be responsible to only one man.

Q. I notice that I overlooked something. Just before you went underground, at the time you were at Columbia as an open member—can we refer to it now as "open" and "un-[fol. 1430] derground" membership? Is that the way it was referred to in the party?

A. In that context I was using underground in the sense that it was not completely out in the open.

Q. Well, I want to refer for a moment to Columbia. At that time did you take any part in the activities of the Young Communist league at Columbia?

A. Not directly, because I was a member of the party, being too old for the YCL, but we did work with the YCL unit on the Columbia campus, because their activities intercrossed in that way.

Q. Was the Young Communist League considered, recognized as a part or as an agency of the Communist Party?

A. Oh, definitely.

Mr. Kuntz: I object to that, if your Honor please.

The Court: Overruled.

Mr. Phillips: I object to it on the ground that the question is too vague, "was recognized as part"; recognized by whom?

The Court: All right, recognized by whom?

Q. Recognized and accepted by members of the party as an integral unit of the Communist Party?

A. Yes.

Mr. Phillips: That is still objected to. This is not an [fol. 1431] authenticating statement that she is making.

The Court: Go ahead. Did you give your answer?

The Witness: The YCL was recognized by the Communist Party as being the younger edition, so to speak.

The Court: You are talking now as a member of—at that time, as a member of the Communist Party?

The Witness: That is correct; the YCL no longer exists.

The Court: And at that time, as a member of the Communist Party, was it understood among members of the Communist Party that the YCL was a part of the Communist Party for people who had, for Communists, but of a younger age group?

The Witness: Yes, that is correct.

Mr. Phillips: Your Honor will pardon me for saying that my objection put to the question is equally as to the language the Judge just used.

The Court: Very well.

Mr. E. H. Bloch: I wonder, Mr. Saypol, would you fix the time here?

The Court: Yes, will you fix the time, please?

[fol. 1432] Mr. Saypol: I referred in my question to the time when Miss Bentley was at Columbia. I have gone back for a moment in respect to the Young Communist League.

Q. That was between 1935 and 1938?
A. Yes. It was 1935, 1936 and 1937; along in there.
Q. I take it your knowledge of the relationship between the Young Communist League and the Communist Party of the United States is founded on your own activities pursuant to directions that you obtained in the course of your membership in the Party?
A. That is right.

Mr. Phillips: I object to that. That is not a question. That is a statement of Mr. Saypol. It is not a question at all.
The Court: Overruled.
A. Yes, that is correct.
Mr. Phillips: Exception.
The Witness: Our unit, my Communist Party unit carried on joint activities with the YCL, not only of the Columbia campus, but also at meetings at the Harlem session.

Q. Now, let us go forward again to the conversation, your going underground and this conversation with Mr. Brown. Did there come a time when you met one Jacob Golos?
A. Yes.
[fol. 1433] Q. When was that?
A. That was roughly I would say in the middle of October 1948.
Q. What were the circumstances of your meeting with Mr. Golos?

The Court: Now wait, Mr. Saypol. Are you connecting this up with the conspiracy here?
Mr. Saypol: Oh, yes. I am coming right into it.
The Court: All right.

A. Mr. Brown said that he was terrifically overworked and that he would therefore have to turn me over to another contact to take care of me. At that time, you see, I was

taking material from the Italian library and passing it on to Mr. Brown, and he said I should have another contact who would be my Communist superior.

Q. That was Mr. Golos?

A. That was Mr. Golos.

Mr. E. H. Bloch: May I ask a question of the Court? I am a little confused in the light of the last question. It was my understanding from Mr. Saypol's statement in response to a former inquiry from the Court that this witness is to testify to show a causal connection—I am using causal in the sense that we have used it in our colloquy—between membership in the Communist Party and the crime charged in this indictment.

The Court: Or certain elements of the crime.

[fol. 1434] Mr. E. H. Bloch: Well that is what I am asking the Court now. Now, from the last question and answer I am led to believe that this witness is also going to testify or attempt to testify concerning events which will relate to the charge over and above the question of Communist Party membership. Now I just want to clarify it in my own mind.

The Court: Let us wait and see.

Mr. E. H. Bloch: Well, you see at the beginning I got the impression that the sole purpose of her testimony was to try to tie up the Communist Party.

The Court: I don't know. It may be twofold. Let us wait.

Mr. E. H. Bloch: Well, I wanted to clarify it in my own mind. I will wait.

Mr. A. Bloch: May I move to strike out the last answer of the witness upon the ground that it appears that it is heresay. She has related a conversation somebody had with her.

The Court: I will have to hear the answer.

Mr. Saypol: It is quite obvious to me inevitably these things do creep in. Counsel is not alert and then raises an objection. I do not intend to stop my witness from testifying. I don't think the hearsay rule is so tightly adhered to [fol. 1435] that I have to set definitely concrete barriers——

The Court: Let me hear the answer.

(last answer read.)

The Court: Strike out the answer. We will characterize the answer in this fashion; That the witness was turned over by Mr. Brown who had been her superior to Jacob Golos who was to succeed Mr. Brown. At that time she had turned over information from the—where was the information coming from?

The Witness: From the Italian Library of Information.

The Court: From the Italian Library of Information to Mr. Brown.

Mr. A. Bloch: May I object to this question as technically putting in the witness' mouth what she is to answer.

The Court: The witness has answered. You objected to the hearsay portion. I struck out the heresay portion and let the rest of the answer stand, Mr. Bloch.

Mr. A. Bloch: Well, the entire answer was heresay.

The Court: No, it was not. Only that portion of what Mr. Brown had told her about why he was turning her over. The objection is overruled.

[fol. 1436] Mr. A. Bloch: Exception.

By Mr. Saypol:

Q. At that time, in the fall of 1938, was it, you first met Mr. Golos?

A. Yes. In October 1938.

Q. Until when did you continue your activities in the Communist Party in association with Mr. Golos?

A. Until his death on November 25, 1943.

Q. That is for a period of approximately five years?

A. Yes, that is correct.

Q. Did you come to know what Mr. Golos' position was in the Communist Party of the United States?

A. Yes, I did.

Q. And what was it?

A. He was one of a three-man control commission and he had numerous other positions from time to time.

Q. What was the control commission?

A. The control commission was that organization which kept the membership in line and told them what they should do, put them out if they didn't behave and so on.

The Court: You referred to a three-man control commission of the Communist Party?

The Witness: Yes, there were three men, three main men on the control commission, yes.

Q. Now, what did you do in connection with Mr. Golos and members of the Party in that five-year period? What [fol. 1437] were your activities?

A. I continued myself to collect information which was to be passed on to Mr. Golos.

Q. Were you underground as you have described it?

A. Very definitely underground.

Q. How about Mr. Golos?

A. Mr. Golos himself was underground but inasmuch as he was known around Party headquarters he probably didn't take the same precautions in the underground that I did.

Q. Was his office at Communist Party headquarters here in New York or elsewhere?

A. His office was a business and it was a cover for his activities. He ran World Tourist.

Mr. A. Bloch: I move to strike it out.

The Court: Strike out "cover," but tell us what else he did.

Q. Where were his headquarter?

A. His headquarters were at World Tourist.

Q. What was World Tourist?

A. World Tourist was a travel agency which was set up originally in 1927 by the Communist Party.

Mr. E. H. Bloch: If the Court please, I move to strike out that latter part, that it was set up in 1927 by the Communist Party unless this witness can definitely swear that she knew that to be a fact.

[fol. 1438] Mr. Saypol: I object to summation. This is a statement that has been made from the witness stand. The witness is under oath. This is a kind of intimidation or summation and I object to it.

Mr. E. H. Bloch: I am not summing up.

The Court: Your objection is overruled. Proceed.

Mr. E. H. Bloch: I respectfully except.

Mr. Phillips: May I make one general objection which will stand for the rest of the witness' testimony? I object to all that this witness testified to not within her own

knowledge, all of this gossip about this one being one of three big men or this one being one of twelve big men, as not within her knowledge.

The Court: Your observation is highly improper because you don't know whether it is not within her own knowledge. You are summing up something which is wishful thinking. I assume that when you said he was one of three members of the commission, the high commission, that you knew that of your own knowledge.

The Witness: That is correct, Judge.

Mr. Phillips: I wanted to establish that she is testifying from her own knowledge.

[fol. 1439] (Last question and answer read.)

By Mr. Saypol:

Q. At this time, Miss Bentley, had you learned what was the relation of the Communist Party of the United States to the Communist International?

A. It was part of the Communist International and subject to its jurisdiction as such.

Q. Where were the headquarters of the Communist International?

A. In——

Mr. E. H. Bloch: If the Court please, I don't know whether I am out of order, but since about five or ten minutes have elapsed from the time I made my first objection, I just want to interject here that my objection persists to this entire line of questioning. I don't want time to be deemed as a waiver of my objection.

The Court: I don't know what is the good of getting up originally and asking for a blanket objection to this line and my having given it to you, when you are going to jump up with each and every question anyway. So you might as well revoke that request for a blanket objection and take your objections with every question.

Mr. E. H. Bloch: No, I want to accede to my original request for a blanket objection.

The Court: All right.

[fol. 1440] By Mr. Saypol:

Q. I think you told us a moment ago that the Communist Party of the United States was a part of the Communist International?

A. That is correct.

By the Court:

Q. Can you tell us up until what time that condition existed of your own knowledge if you can?

A. It has always existed.

The Court: Very well.

The Witness: At least during the time that I was in the Party.

Q. You told us Golos died in November 1943?

A. That is correct.

Q. Did you continue your activities after that?

A. Yes. After his death I was passed on to another contact, and finally to my last contact, Mr. Anitol Gromov who was first secretary of the Russian Embassy.

Mr. E. H. Bloch: May we have the time fixed on this latter statement?

Q. When was Gromov your contact?

A. You mean when did I meet him?

Q. Yes.

A. I met him in October 1944.

Q. How long did you continue?

A. I think the last time I saw Mr. Gromov was late [fol. 1441] November or December 1945.

Q. During the time you were a contact for Golos were there any activities that led into the Soviet Embassy?

A. I don't quite understand your question.

Q. I say during the time that you were contact for Golos, that is from 1938 until 1943——

A. Yes.

Q. —do you know from your activities with him whether any of those things led into the Soviet Embassy?

A. Yes. The information was sent to the Soviet Embassy.

Q. Now, in that period in your association with Golos and

with the second contact after that and with Gromov, is that it?

A. Yes, Gromov.

Q. Then what did you do as an underground member pursuant to directions from either of them or any of them?

A. I would say the bulk of the work was collecting information from Communists employed in the United States Government and passing it on to Mr. Golos or other Communist superiors for transmission to Moscow.

Q. Well, what connection did the Communist Party membership of you and Golos have with the destination of this material to Russia?

A. The Communist Party being part of the Communist International only served the interests of Moscow, whether it be propoganda or espionage or sabotage.

[fol. 1442] By the Court:

Q. Well, what is that statement based on, may I ask?

A. It is based on what I have been told by all of my Soviet superiors that I have dealt with, plus what has been told me by Mr. Earl Browder and a number of other people.

Q. Is it based also on your observation in the Communist Party.

A. Yes.

Q. Over what period of years?

A. Actually the fact that the American Communist Party carries out the directives of Moscow and regards it as its spiritual father, and the literature I have seen.

Q. Literature that you read at the Communist Party meetings?

A. Yes. My basic knowledge was that I gave orders to Earl Browder after the death of Mr. Golos, transmitted orders from Moscow to him, and he had to accept them. Sometimes he would fight against them, but he ended up by accepting them.

Q. You say he had to accept them. That is the very thing I am getting at. What was there about membership in the Communist Party which made that implicit in the membership that he would have to accept them? Was there an oath taken as a member of the Communist Party or something of that character?

A. Not when I went in in my day, but it was—it became [fol. 1443] implicit after you had joined it.

Mr. E. H. Bloch: I move to strike out the answer as not responsive to the Court's question.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Implicit in what respect?

A. I mean in the sense when you had realized you were serving the interest of Moscow and refused to carry them out, you were immediately expelled.

Q. Was that in a charter or did you see that in operation, or did that occur at meetings?

A. It isn't in a charter because Communists don't put that in a charter. I saw it in operation.

Q. Were there meetings, did I understand, of the particular divisions of the Communist Party from time to time?

A. Yes.

Q. And did you attend meetings of the particular division to which you belonged?

A. Well, yes. In the days when I wasn't underground I did, yes.

Q. You say the literature would be read?

A. That is correct and the Party line would be given to you that you were to assume in certain cases.

The Court: All right, proceed.

By Mr. Saypol:

Q. Throughout the whole period both above ground and [fol. 1444] underground was there continual consideration of the Party Line, meaning the line from Moscow, as it deviated and changed, and was it submitted for consideration and for adoption by the members of the Party?

A. Never.

Q. Now, the Court has made some reference to a charter: Were the activities that you were engaged in when you were underground the subject of charter reference? Was there any such thing as a requirement to adhere to a constitution when you were underground?

A. No. When you were underground you were subject only to the exigencies of the moment.

Q. When you say the exigencies I take it you mean you followed the directions of your superior?

A. That is correct.

Q. And when you talked a moment ago about your giving directives, Soviet directives to a man like Browder, I assume you in turn would receive those instructions from either one like Golos or one like Gromov?

A. That is correct.

Q. Who was connected with the Soviet diplomatic representation here?

A. That is correct.

Q. Will you describe to us——

The Court: Excuse me.

[fol. 1445] By the Court:

Q. Did you have reason to believe that after you went into what you call the underground that the policy of the Communist Party in any way changed on the part of those who were still in active membership in the Communist Party with respect to following what you call the Party line or the dictates of the Communist International?

Mr. E. H. Bloch: Now if the Court please, I object to the Court's question because it presupposes a state of facts not proven, for this reason: This witness answered so far as the witness' membership in the Party was concerned that these deviations were never brought home to them.

The Court: What deviations?

Mr. E. H. Bloch: She testified whenever there was a change in the Party line from Moscow, dictated by Moscow, certain top people would know about it; there would be orders given.

The Court: Orders given to the members of the Party.

Mr. E. H. Bloch: But not to the members. I would like the Court—and I am sure——

The Court: All right.

[fol. 1446] By the Court:

Q. Now, were the orders given to the members of the Party?

A. Certainly they were. The orders went right straight down the line. Certainly.

By Mr. Saypol:

Q. Can you tell us in your performance of this work, were you characterized as a courier? Was that your general description?

A. First, when I was doing espionage work I was a courier. Then on Mr. Golos' death I got promoted up; the rank was considered more than a courier because I was actually acting; I had a larger group of people, more responsibility. So it was a little bit higher job than that.

Q. In the place which you occupied as you described it, can you tell us who some of your contacts were?

A. You mean the people I had working in Washington?

Q. People from whom you received information or material?

A. Well, I had quite a number of them. I had two groups down there. Then I had quite a number of isolated individuals. Do you want me to list them all? There must have been some 30-odd altogether.

Q. I think you have already testified before that one was a man named Abraham Brothman, is that right?

A. Yes.

[fol. 1446a] The Court: We have gone past our recess time. We will take our morning recess at this time.

(Short recess.)

[fol. 1447] Q. You told us before the recess, Miss Bentley, that at various times you had as many as 30 sources of information for whom you served as contact, is that correct?

A. I think it was slightly more than 30. I haven't added them up, Mr. Saypol.

Q. Did those activities continue up until 1945 or 1946?

A. Yes. I went to the FBI in the summer of 1945 and told them what I had been engaged in and they asked me if I would continue these activities under their guidance, which I continued to do.

Q. Until when?

A. So that actually I think it continued up until 1947.

Q. Now, can you tell us from what source—what was the

initial source of these individuals from whom you obtained information as a contact?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. All these contacts were—at least the ones that I handled, were obtained from the American Communist Party.

Q. Was that, so far as you know, the universal rule or were there exceptions?

A. Well, I think two or three that I had were not actually [fol. 1448] Party members but they were obtained through the Party. There were exceptions to that—people that Mr. Golos handled who had been bought or there were other people who had been obtained directly without going through the Party.

Q. What methods were utilized, and what did you do to assure yourself of the continuing loyalty to the Soviet cause of these contacts with whom you transacted this business?

A. We kept them good Communists. We collected their dues. We gave them the same literature that the people in units were receiving and we hammered into them the idea they were good Communists and therefore they must work for Russia.

Q. So that it was the adherents of the Communist Party of the United States to the Communist International that served as the source of these espionage agents and it was likewise those persons that were utilized to maintain their continuing loyalty and adherance to the cause, is that correct?

A. Yes.

Mr. E. H. Bloch: I object—wait. I move to strike out the answer because it got in before my objection. I object to the form of the question upon the ground that it is argumentative, upon the ground that it is leading and suggestive and upon the ground that it is a summation.

[fol. 1449] The Court: Wait a minute—I will sustain the objection on that ground.

You may break it down and ask the question step by step.

Q. Is it correct, then, Miss Bentley, that for the purposes —I withdraw that.

Is it correct for me to say——

The Court: Perhaps——

Q. —or is it the fact——

The Court: May I ask a few questions?

Mr. Saypol: Indeed.

By the Court:

Q. Based upon your membership in the Communist Party, based upon your work for the Communist Party and your activities in behalf of the Soviet Union, can you say that there was a close relationship, indeed almost an adhesive relationship between the Communist Party of the United States and the Communist International?

A. Yes, quite definitely.

Q. Can you further say that at every meeting of the Party that you attended or at a great many of the meetings which you attended that adhesive quality was preached to the membership?

A. Yes, that is correct.

Q. Would you say further from your experience that any member of the Communist Party of the United States who [fol. 1450] did not adhere to the Party line as dictated by the Communist International would be expelled from the Communist Party of the United States?

A. Yes, they would be.

Q. And were so expelled when they did not adhere?

A. Yes, they were.

The Court: Do you want to take it from there?

Mr. Saypol: Yes, if I may. I think your Honor has—well, I wanted to make an observation but I do not think it is necessary. Your Honor has relieved me of a considerable burden.

Mr. E. H. Bloch: Ah, Mr. Saypol—I object to the statement.

The Court: All right, strike that statement.

By Mr. Saypol:

Q. In these activities—I will withdraw that for a moment. Did that continue until the time after 1945 when for a spell, as you have testified, you continued your activities under the supervision of the Federal Bureau of Investigation?

A. That continued until my last connection with the Communists, from my own practical knowledge, which would be in the spring of 1947, yes.

The Court: I think I forgot to ask, were the headquarters of the National or of the Communist International—was [fol. 1451] that in Moscow?

The Witness: That was in Moscow, yes.

Q. One question as to this: I take it that you, on occasion, went to the headquarters of the Communist Party here in New York?

A. Yes. After Mr. Golos' death I went almost every week or every two weeks to see Earl Browder and numerous other people, but particularly Earl Browder.

Q. Where were the offices of the top officials of the Party?

A. On the 9th floor.

Q. Can you describe to us, were those offices open and accessible to the public the same as any other business offices in a commercial building?

A. No.

Mr. E. H. Bloch: May I have the time fixed, your Honor?

The Court: Fix the time.

The Witness: Well, the time that I was going to see Mr. Browder would have been from about the early part of—let me see, the first of December 1943 up until the time that he was ousted from the Party, which was in the late spring of 1945.

Q. During that period from 1943 to 1945 was the atmosphere on this 9th floor such that it was open and accessible to the public? Did anybody walk in to visit one of the functionaries?

[fol. 1452] A. No, it was extremely difficult to get to the 9th floor, as a matter of fact, because it is one of those buildings that on one side has the Workers Book Shop and on

the other has the elevator going up to the various offices—some of them Communist newspapers, and some things like the New York District but to get to the 9th floor is very, very difficult.

Q. When you say "difficult" you mean difficult because it is a tortuous route or do you mean that access was restricted?

A. Access was definitely restricted. There was only one elevator that went to the 9th floor and they had to know you very well or you had to have credentials in order to get on that elevator, and if you got on it and tried to get off on the 9th floor and they did not know you, you went down again because I had that happen to me twice before they got to know me rather well.

Q. Well, do you know—excuse me.

A. (Continuing:) Then when you reached inside the elevator, then again there was a barrier, there was a locked door that the receptionist could click and the receptionist had to know you to let you through or else have orders to let you through.

Q. Was that distinction applied between the public on the one hand and Party members on the other, or were the restrictions applied also to members of the Party? In other [fol. 1453] words, could any member of the Party get in there?

A. No.

Q. In other words, only certain members who were known?

A. Only very special members could get up there.

Q. Coming back now to your activity as a courier, in what name or under what name were you known?

A. Well, to my Washington contacts I was pretty much known as Helen. In one case I was known as Joan. I was known at one point to my Russian superiors as Mary. I had a sort of collection of names along in there.

Q. Come back now to the time when Golos was your superior—by the way, by what name was he known to his contacts?

A. I would say to the majority of them he was known as John.

[fol. 1454] Q. Is that the name by which you first knew him?

A. No, I was introduced to him first by the name of Timmy.

Q. How long was it before you got to know his name?

A. I think it was about a year.

Q. Were there occasions in your own work as a courier when you used your own first name, your true first name, Elizabeth?

A. Yes, there were occasions, although later, quite later on in the work, it was rather dangerous to do it. We didn't —yes, part of the time I did.

Q. In the course of your Communist Party activities with Golos, were there occasions when you accompanied him to meetings or to the vicinity of meetings that he was holding with some of his contacts?

A. Yes, quite a few occasions. We would possibly be on our way to dinner and going to some other place, and I would drive along in his automobile with him.

Q. Do you recall when there was any occasion like that, when you accompanied him to the vicinity of Knickerbocker Village?

A. Yes, I do remember.

Q. About when was that?

A. I should say it was in 1942, probably in the early fall, possibly, of 1942; might have been late fall.

Q. Will you describe what occurred?

[fol. 1455] A. Yes. Mr. Golos said that he had to stop by to pick some material up from a contact, an engineer.

Mr. E. H. Bloch: Pardon me. May we come to the bench now?

The Court: Well, do you want to take an objection?

Mr. E. H. Bloch: I certainly do.

The Court: I think I must sustain this objection.

Mr. Saypol: As a matter of hearsay?

The Court: Yes.

Mr. Saypol: That's all right.

Q. Don't tell us about conversations, if you will, with Mr. Golos. Tell us what occurred; tell us what you knew, what knowledge you had.

A. Mr. Golos parked the car; left me in it; went across the street to wait on the corner for his contact to appear;

paced up and down for a bit. Then the contact finally arrived. Then they went three or four doors down to, I think, a candy store to carry on their business. Then Mr. Golos returned to the car with an envelope of material which he had received from the contact.

The Court: Miss Bentley, during this period of time that you talk about, we will say, '41, '42, '43 '44, were you personally receiving any material relating to the national [fol. 1456] defense, of a secret nature?

The Witness: Yes, I handled all the American Communists who were working in the United States Government, and I was getting it from agencies like the OSS and the Treasury.

The Court: You were?

The Witness: Yes.

The Court: And this material was then transmitted to Russia?

The Witness: That is correct.

Mr. E. H. Bloch: Now, if the Court please, in order to keep the record straight, I object to any activities of this witness with Golos in the year 1942, relating to a specific act, from which one can infer an illegal act, unless it is directly related to——

The Court: All right, I will sustain your objection.

Q. You told us a little while ago about a trip that you took with Mr. Golos in the vicinity of Knickerbocker Village; is that right?

A. That is correct, yes.

Q. You told us that you saw Mr. Golos approach a man.

A. A man approached——

The Court: I sustained the objection to that, Mr. Saypol. [fol. 1457] Mr. Saypol: May I approach the bench, if the Court please, now?

The Court: All right.

(The following took place at the bench, outside the hearing of the jury:)

Mr. Saypol: Judge Hand, in his latest pronouncement on circumstantial evidence, in the Hoffman case, decided a week ago, or two weeks ago, reiterates what he said many

times before about circumstantial evidence. There is circumstantial evidence here and it should be left for the jury to judge whether Julius Rosenberg was one of his contacts; whether Miss Bentley was an intermediary to effect arrangements with him.

The Court: Does she identify Rosenberg?

Mr. Saypol: She doesn't identify him except as "Julius, an engineer," who lived in the vicinity of Knickerbocker Village, whom she served to effect meetings with.

The Court: That is all right, you can get that; you can get that. She was called by a man Julius, and so forth, particularly in view of the testimony of Elitcher.

Mr. Saypol: That is right.

The Court: Yes, but now you are getting to a specific meeting where she didn't identify a man, and I would [fol. 1458] much rather not have that in.

Mr. Saypol: She can describe him.

The Court: Does she describe him in any way so that it is actually Rosenberg?

Mr. Saypol: She describes him in such a way but she cannot say that that was the man.

The Court: I know that.

Mr. Saypol: She describes him by height.

The Court: Then will we have something in the record eventually, so that the jury can then have something to base its conclusion on?

Mr. Saypol: Yes.

Mr. A. Bloch: The objectionable feature, as I see it, is that Golos, it is admitted, died in 1943.

Mr. E. H. Bloch: '42.

The Court: Yes.

Mr. A. Bloch: How is anything that is prior to 1944 material to the indictment?

Mr. Cohn: I am referring to the Dennis case, your Honor.

The Court: Yes, that is what I have reference to. Here is the language that they used there, and I am quoting now from United States vs. Dennis, 183 Fed. (2d) 201, on page 231:

[fol. 1459] "There can be no logical reason for limiting evidence to prove that the defendants were in a conspiracy between 1945 and 1948, to the period of the charge. If they

were in the conspiracy earlier, declarations of anyone of them or of any other person acting in concert with them are as competent as those made within the period laid."

Mr. A. Bloch: Correct; declarations made.

The Court: Yes.

Mr. A. Bloch: He is not calling for any declarations made.

The Court: How about an act? Doesn't an act fall in the same category as a declaration?

Mr. A. Bloch: No, I think declarations are very material to show a predisposition.

Mr. E. H. Bloch: If the Court please, you cited the Dennis case once before. I think we discussed this problem. I read this Dennis case and it was my impression, although I don't dispute what the Court read, of course, that in a sense this is torn out of context, and I will tell you why: The charge in the Dennis case was that the eleven leaders of the Communist Party advocated the overthrow of the Government by force and violence, and I think Judge Hand let in testimony prior to 1944——

[fol. 1460] Mr. A. Bloch: Judge Medina.

Mr. E. H. Bloch: Judge Medina, sustained by Judge Hand—on the theory that there was a change in the policy of the Communist Party from 1944 until a meeting that they held at some convention in 1945.

The Court: Let's cut this short. I think this: I think that you will avoid any problem if you just get to the conversation part, if there was any telephone talk with a Julius and what led to that, without this specific meeting here.

Mr. Saypol: That is all right, I am satisfied to do that.

Mr. E. H. Bloch: Excuse me. I just want to say—off the record.

(Discussion off the record.)

(The following in the hearing of the jury;)

By Mr. Saypol:

Q. Miss Bentley, referring to this occasion when you accompanied Mr. Golos to the vicinity of Knickerbocker Village and you saw him in conversation with a man. Do you recall that?

A. Yes.

Q. Can you describe the characteristics of that individual to whom Golos talked? What did he look like?

Mr. E. H. Bloch: Just one second, Miss Bentley. I object [fol. 1461] to the question upon the ground it is incompetent, irrelevant and immaterial, outside the four corners of the charges in this indictment. This relates to an alleged incident that occurred in 1942, I believe—Mr. Saypol, correct me if I am wrong; it is my recollection—and on general grounds as well as the specific ground of remoteness, I object to the question.

The Court: Well, what about the fact that it occurred in 1942, Mr. Saypol?

Mr. Saypol: Well, I am proceeding under the authority of the Dennis case.

The Court: I know that.

Can you connect it up with a link, up to the time of the alleged commencement of the conspiracy in 1944?

Mr. Saypol: There is testimony from this witness that these activities generally continued right along up until 1946 or '47.

The Court: I am going to sustain the objection as to that particular assertion.

Mr. Saypol: Well, then, if that is so, I will abandon that line of inquiry, if the Court please.

The Court: All right.

Mr. Saypol: Let me just make this added observation—— [fol. 1462] The Court: There has been testimony here of an admission within the interval of the conspiracy as charged in the indictment. There has been testimony by Mr. Elitcher that when he went down to the vicinity of 10 Monroe Street with Sobell, Sobell went to see Rosenberg, as he said, Sobell had told him and Sobell returned. Sobell had said to him that there was nothing for him to be concerned about—he was referring to the alleged surveillance by the FBI—and that Rosenberg said that he had received a call from Elizabeth Bentley.

Mr. Saypol: That's right.

[fol. 1463] The Court: That is the conversation which did occur during the period named in the indictment.

Mr. Saypol: That is right.

The Court: I say you have a perfect right to ask the witness about any conversations she may have had close to the time of the indictment, which would throw us some light on this statement, but this alleged description of 1942 is a different point.

Mr. Saypol: Well, the activity that I want to connect up with this testimony about Julius from Elitcher, and I think it came from another witness, too, is all around the same thing. I tell that to your Honor now.

The Court: Well, first ask about that conversation; you may ask about that conversation.

By Mr. Saypol:

Q. Subsequent to this occasion when you went to the vicinity of Greenwich Village with Golos and saw this man, did you have a telephone call from somebody who described himself as "Julius"?

A. Yes, I did.

Mr. E. H. Bloch: Wait. I object to the form of the question upon the ground it is leading. I also ask that the time be fixed.

The Court: All right, fix the time as best you recall.

[fol. 1464] Q. Can you tell us when you had a conversation such as I described?

A. Do you mean the first telephone conversation or the last?

Q. You can give us either. How long did they continue?

A. They continued up until almost November 1943, at intermittent intervals.

The Court: You mean with somebody who called himself "Julius"?

The Witness: That is correct.

The Court: When did they begin?

Mr. E. H. Bloch: Now——

The Court: Just a moment.

Mr. E. H. Bloch: I am sorry.

The Court: When did they begin?

The Witness: I would place it in the fall of 1942.

The Court: Now, do you want to say something, Mr. Bloch?

Mr. E. H. Bloch: Yes, I would like to move that the answer be stricken out upon the following grounds: first, that it is not within the four corners of the indictment; in the second place, no proper foundation has been laid, where this witness identified the voice as the voice of Julius Rosenberg, or any other present conditions.

[fol. 1465] The Court: She hasn't given the conversation yet.

Mr. E. H. Bloch: Yes, but Mr. Saypol, in the form of the question to which I have objected, has already gotten to the jury something about this.

The Court: All right, it will be for the jury to determine, not for you, nor for me, it will be for the jury to determine from all the evidence whether or not the "Julius" she is referring to is the defendant Julius Rosenberg on trial. The testimony is admissible, as I see it, because of the foundation which had been laid, or, shall I say, the previous testimony which came in from the lips of Elitcher, and I believe it is found on page 355 of the record, wherein he refers to a conversation with Sobell, in which Sobell says that Rosenberg said that he had some concern over his telephone call with Elizabeth Bentley; he didn't think that she knew who he was. It will be for the jury to infer, whether they want to infer, whether they want to give any weight whatsoever to this portion of the evidence, as to whether or not they will have to make a determination as to whether or not the Julius she spoke to in view of this previous testimony, is the defendant Julius Rosenberg.

Mr. E. H. Bloch: I understand your Honor's theory, [fol. 1466] and I don't agree with it. That is why I made my objection, because I think this evidence is not only incompetent for all the reasons I have suggested, but it again instroduces an element in the case which can only prejudice the defendants and take their minds off the main issues that they have to decide.

Mr. A. Bloch: My further objection is that her testimony, that somebody said to her he was Julius, is hearsay in and by itself and that should not be admitted.

Mr. Saypol: To supplement the record, may I make the observation, too, that the witness David Greenglass likewise referred in his testimony to a conversation with the defendant Rosenberg, regarding Elizabeth Bentley.

The Court: Well, that may be.

Mr. Saypol: Now, may I try to put it in two questions and get it over with?

The Court: Go ahead.

[fol. 1467] By Mr. Saypol:

Q. Subsequent to the occasion when you went to the vicinity of Knickerbocker Village with Mr. Golos and saw him in conversation with a person, and continuing until November 1943, did you have telephone calls from a person who described himself as Julius?

A. Yes, I did.

Mr. E. H. Bloch: Same objection, your Honor, of course.

The Court: Overruled.

Q. The answer is yes?

A. Yes.

Q. As a result of those telephone calls from the person describing himself as Julius, did you then have conversations with Golos regarding the telephone calls from the person describing himself as Julius?

A. That is correct.

Mr. E. H. Bloch: I would like the answer to be either yes or no, your Honor.

The Court: Just answer that yes or no.

Q. The answer is yes?

A. Yes. I think I said "That is correct." I am sorry.

Q. And thereafter, having conversed with Golos about the telephone call from Julius, in the first instance, would you immediately thereafter receive further telephone calls [fol. 1468] from the person describing himself as Julius?

A. Yes.

Mr. E. H. Bloch: Same objection, your Honor.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. As a result of these conversations with the person describing himself as Julius, and with Golos, did you learn to know what Julius's occupation was?

A. Yes.

Mr. E. H. Bloch: Now, if the Court please, I object to it. I object to it upon the ground that it is apparent from the testimony of this witness that she could not have personal knowledge, that on the face *ot if*, it appears that she hasn't personal knowledge, and therefore it is pure hearsay and not binding upon this defendant.

The Court: I am not going to sustain it on that ground but I am going to sustain the objection generally.

Mr. Saypol: May I be heard on that, if the Court please?

The Court: Yes.

Mr. Saypol: One, in ordinary normal activity as a human being, absorbs knowledge as a result of experiences, which I think is recognized as adequate to support the contention that there is knowledge. For instance, I stand here [fol. 1469] as a lawyer——

The Court: I know, I know. I don't need any argument on that. What you are saying is that intelligent people can form a conclusion based upon facts which they hear or see or so forth, and that they are entitled to form a conclusion, and I know very well that the Petrone case said you can give your conclusions from time to time, and that isn't the basis upon which I sustained the objection. I just think we have gone far enough with the subject and I think for the purposes of what the Government intended to introduce, they have introduced it.

Mr. Saypol: May I have one further question, if you will allow me? Then I will drop it.

The Court: Yes.

Q. From your conversations with Julius and with Golos, did you come to learn in what vicinity Julius resided?

A. Yes.

Mr. E. H. Bloch: I object to it, your Honor, upon the same grounds.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. Yes, he lived in Knickerbocker Village.

By the Court:

Q. Where is Knickerbocker Village? Do you know the [fol. 1470] vicinity?

A. I can get to it, on the lower East side, but I don't think I can describe how to get down there.

Q. Do you know whether it is any place close to the Journal-American building? Do you know where the Journal-American building is?

A. The Journal-American building is on the waterfront, isn't it, or am I wrong?

Q. Yes, that is right.

A. It is down past the Allen Street Public Markets, and down on in there. I know how to get down there, but I can't describe it to you because I don't know that part of town too well.

By Mr. Saypol:

Q. Do you remember the type of street, wide or narrow?

A. Narrow streets.

Q. The night that you went there?

A. Narrow streets and there are indoor public markets.

Mr. E. H. Bloch: Now, if the Court please, I assume that the Court sustained my objection with reference to this night that she was alleged to have gone there with Golos.

The Court: Yes, I did.

Mr. E. H. Bloch: And I think this is a continuation of something that has already been objected to and sustained. [fol. 1471] The Court: I sustained that.

Mr. Saypol: I was only following up the Court's question. I said I would ask but the single question, and I did.

The Court: All right.

By Mr. Saypol:

Q. Now, Miss Bentley, when for the first time did it come into the realm of public knowledge that you had been engaged in these espionage activities?

A. Well, unless it was someone who had some inside information, it must have been the end of July 1948, when I testified before a Senate Committee and a Congressional Committee.

Q. That was the first time that you made a public disclosure, as distinguished from your cooperation with the FBI, of these activities in which you had been engaged in behalf of the Communist Party and Soviet Russia?

A. That is correct, yes.

The Court: Might I say this: these conversations, that you referred to, with someone who called himself Julius, might I characterize the part that you played in those conversations, that you carried messages from this person called Julius to Golos, and back to Julius from Golos?

The Witness: My part was that I took messages from [fol. 1472] Julius to Golos and told Golos that he wanted to meet him, and so on. I was a go-between.

The Court: I see. Very well.

Mr. Saypol: I think that is all.

You may examine.

Mr. E. H. Bloch: Will you bear with me one moment, please?

Cross-examination.

By Mr. E. H. Bloch:

Q. Miss Bentley, when did you say you first went to the FBI?

A. In the latter part of August 1945.

Q. Where did you contact the FBI at that time?

A. In New Haven, Connecticut.

Q. Did you go to the FBI and inquire about a certain captain?

A. I went to the FBI to tell them my story.

Mr. E. H. Bloch: I move to strike out the answer—well, we had better wait.

The Court: I heard some of it. She had gone to the FBI herself. I have got a faculty of hearing a few things.

Mr. E. H. Bloch: In New Haven, Connecticut, and I asked her whether or not she inquired about a certain captain and she gave me an answer, your Honor, and I am moving to strike out the answer upon the ground that it is not responsive.

The Court: Well, the answer will stand, but you may [fol. 1473] press your question.

Q. Did you inquire of the FBI about a certain captain at that time?

A. Yes. In the course of telling them things I inquired about the captain, yes.

Q. And that captain was a friend of yours, was he not?

A. Yes, I think he was an acquaintance of mine.

Q. And you had met him before you went to the FBI?

A. Yes, I would say I had met him maybe three months before, something of the sort.

Q. He had taken you out socially?

A. Yes, rather, on and off, yes.

Q. Now, was there any particular reason why you asked about this captain——

Mr. E. H. Bloch: I withdraw that.

Q. Did you go down to the FBI for the purpose of disclosing your Communist Party activities?

A. Certainly.

Q. Was there any reason that you can assign to us why you inquired about this captain when you went down there for the purpose of disclosing your Communist Party activities?

A. Certainly. I was working with the Russian secret police; I was going with the FBI to work with them; I was being taken out socially by a man who told me he was doing undercover work for the United States Government. That made a very dangerous situation.

[fol. 1474] Q. And you had been engaged in dangerous situations for many years up to that time, had you not, Miss Bentley?

A. Naturally, and I always take precautions when I am in dangerous situations.

Q. Yes. You found yourself in a very dangerous situation in 1945?

A. No, I saw nothing dangerous in 1945.

Q. You did not. Even though you had been engaged in dangerous work for many, many years; isn't that right?

A. Probably no more dangerous than any other year.

Q. Well, you continued as an alleged member of the Communist Party after you disclosed certain information to the FBI in 1945; is that not the substance of your testimony?

Mr. Saypol: I object to the question as to form. There was nothing at all alleged about it. It was factual and accurate and actual.

Q. All right. You continued in fact as a member of the Communist Party until 1947; is that right?

A. Yes, I continued in contact with the Communist Party until 1947.

Q. And from the first time you went to the FBI in New Haven, in 1945, until some time in 1947, you continued your activities as a member of the Communist Party under the [fol. 1475] instructions of the FBI: is that not right?

A. I continued contacting the Communists, yes.

Q. Now, prior to 1945 you had many contacts, you say?

A. Quite correct.

Q. Whom you met; is that correct?

A. As I said, I think I had some 30-odd contacts, yes.

Q. Whom you met personally?

A. No, I didn't meet all of them personally.

Q. Well, how many of the 30 did you meet personally?

A. Well, I would have to sit down and figure it out for you. I don't know whether it was 20 or how many it was.

Q. Well, give us your rough estimate.

A. Roughly, I will say 20, but I can't bank on it because I would have to sit down and count noses on it.

Q. And would you say that those 20 whom you met personally were doing underground work?

A. They were doing espionage work, which is synonymous with underground work.

Q. And you were working with them, knowing full well that they were doing espionage work; isn't that correct?

A. I was doing espionage work myself.

Q. Have you ever been arrested for committing the crime of espionage or conspiracy to commit espionage?

[fol. 1476] A. No, I haven't.

Q. Have you ever been arrested for committing espionage or conspiring to commit espionage?

A. I am sorry, I just answered that question.

Q. Have you ever been indicted? There is a distinction, Miss Bentley, between an arrest and indictment, I am sorry.

A. No, I have not been indicted, nor have I been arrested for anything.

Q. And you have not pleaded guilty——

Mr. Saypol: Now, if the Court please——

The Court: You can't plead guilty without an arrest or indictment.

Mr. E. H. Bloch: You might sometimes voluntarily come in, your Honor.

The Court: No, you can't. You have got to have an indictment.

Q. You have never been convicted, have you——

Mr. Saypol: The witness has already answered, your Honor.

Q. —for the crime of espionage or conspiracy to commit espionage?

The Court: The answer is obvious. Let her answer.

Mr. Saypol: She has never been prosecuted. How can she be convicted?

[fol. 1477] A. No.

Q. And you have never been prosecuted for committing espionage or conspiracy to commit espionage, have you?

A. No.

Q. Now, you have referred to a man by the name of John Golos.

A. Jacob Golos.

Q. I am sorry. He was known to you also as John?

A. John was the name he used with his undercover contacts. His real name was Jacob Nathan Golos.

Q. And what name did he use to you?

A. Well, when I first met him for the first year, I first knew him as Timmy. After that I knew him by his real name.

Q. What name did you call him?

A. You mean personally?

Q. Yes.

A. I called him Yasha.

Q. You were pretty friendly with him, weren't you?

A. I think I have said this in other trials: I was in love with Mr. Golos.

Q. And you not only were in love with him but you lived with him, did you not?

A. Yes, I did and, as I have explained at each and every trial, that was a Communist——

Mr. E. H. Bloch: I move to strike out "at each and every trial," your Honor. I think I am entitled to a di-
[fol. 1478] rect answer.

The Court: Answer the question.

Q. You lived with him, did you not?

A. I lived with him in what was the Communist conception of marriage. The Communists didn't believe in bourgeois marriage.

Q. And you didn't believe in bourgeois marriage?

A. Since I was a Communist, I didn't.

Q. And you lived with him, did you not?

A. I certainly did.

Q. In the eyes of the American law you were not living with him as legal husband and wife; is that not correct?

Mr. Saypol: I don't think an expert like Mr. Bloch could answer that question, so I object.

The Court: And you can't generalize as "American law," because I understand there are some states that recognize common law marriages.

Q. Did you ever live with Mr. Golos outside of the State of New York?

A. I didn't live with Mr. Golos on the same premises, if that is what you are getting at.

Q. In New York?

A. No, I did not live on the same premises with him.

Q. But you had relations with him?

A. Yes, I have told you that once before.

Q. In New York?

A. In New York.

[fol. 1479] Q. And only in New York?

A. I haven't the slightest remembrance. I would have to go back and think through it.

Q. Well, will you kindly just think through it a little bit and tell us whether or not you lived with him any places outside of New York?

A. I don't think that is necessary.

The Court: No, no. We have had enough of this subject.

Q. Did you know that Golos was married at the time you started to have relations with him?

A. Mr. Golos was never legally married to any woman in his life. Any other women had the same relationship I had. He did not believe in bourgeois marriage. He was a Communist.

Q. Would you characterize your relationship with Mr. Golos as you being the mistress of Mr. Golos?

A. I don't feel I am called upon to characterize it. That is up to you.

Q. I am asking you now.

The Court: No, I am going to sustain the objection. I think she is giving you the facts. Characterization is unimportant.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: I think it would be a whole lot more appro-
[fol. 1480] priate if we got to the issues in the case. I think counsel has adequately made the point. I think throughout this trial the Court has been patient with counsel; has frequently suggested to counsel that cross-examination be cut off because of its extensive repetition, and I think on this subject it would be more advisable for counsel to proceed with the points in issue.

Mr. E. H. Bloch: I object to Mr. Saypol's statement. I think——

The Court: Don't take an objection on an objection. Let's go on. I have told you, go on.

Q. Did you know that Mr. Golos had a child when you started to have relations with him?

A. I knew that Mr. Golos had lived with a woman previously, who had gone back to the USSR two years before, and that he had had a child by her, yes.

Q. As a result of that union; is that correct?

A. As a result of their living together, or whatever it was.

Q. Now, Miss Bentley, were you a member of the Communist Party in 1927?

A. '27? No.

Q. So when you testified in response to one of Mr. Saypol's questions about an event in 1927, you didn't have any personal knowledge of it, did you?

[fol. 1481] Mr. Saypol: I object to that, if the Court please. The witness testified to something that was common knowledge to everybody and went back that far. She testified directly that she joined the party in 1935.

The Court: I understand.

Mr. E. H. Bloch: I have reference——

The Court: Why don't you address the question particularly and direct her mind to the particular subject matter?

Q. Do you remember testifying this morning about World Tourists?

A. Yes, certainly.

A. That is correct. You see, I ran World Tourists for a year and a half myself and I have seen the incorporation papers and all the records which prove that conclusion.

Q. And it is on that basis——

A. It is on the basis of my having seen direct documents and records when I was managing World Tourists for the American Communist Party that I say that.

Q. That is what I want to know.

A. That is correct.

Q. Did you recognize the voice of the man who you say called you up and said, "This is Julius"?

[fol. 1482] A. What do you mean recognize?

Q. Are you a college graduate?

A. Well, I mean——

The Court: I must say that is ambiguous, recognize; what do you mean?

Q. Do you recognize whose voice it was?

The Court: You didn't say that.

Mr. E. H. Bloch: I am sorry.

Q. Did you recognize whose voice it was who called you up and said——

The Witness: I don't understand, your Honor. I have heard the man over a telephone, that is all. I have heard no other voices. What does he mean?

Mr. Saypol: Just a moment. I object to the question as to form. It depends upon whether Mr. Bloch addresses himself to the first call from Julius or to subsequent calls. I hardly think——

The Court: No, no.

By the Court:

Q. Did you ever meet a person, did you ever meet anybody in person, whose voice you heard, and you can now say is the voice of the man who identified himself as Julius on the telephone?

A. No, I have never met anyone whose voice I heard, whom I could identify as Julius.

[fol. 1483] By Mr. E. H. Bloch:

Q. How many times in all do you say this person who called you up and said, "This is Julius"——

A. I would put it around—it might have been five or six; it may have been more.

Q. And during what period of time was this?

A. I think I have stated that. It was from the fall of '42 to about November of '43.

Q. Can you tell us more specifically when these calls came in?

A. Yes, they always came after midnight, in the wee small hours. I remember it because I got waked out of bed.

Q. You were living at that time in Mr. Golos's apartment?

A. I have just informed you, I think twice, that I did not live with Mr. Golos. I lived at 58 Barrow Street, by myself.

Q. When you say these calls came in in the wee hours of the morning, was that at Mr. Golos's house at which you received these calls?

A. I have just told you, the calls came to my house at 58 Barrow Street, Mr. Golos was living some other place.

Q. Was Mr. Golos with you at your house at 58 Barrow Street when these calls came in?

Mr. Saypol: Just a minute. Obviously, on my examination I couldn't pursue the subject beyond certain limits,

[fol. 1484] but I think it would be appropriate, and I ask the Court to advise the witness that in response to questions of counsel in this field there is latitude for her to describe the circumstances in which she received the calls and what she did about them. I couldn't pursue it. I intended to do it on redirect, if necessary, but to facilitate movement of the trial, I ask, if you will, if your Honor will not advise the witness to that effect.

The Court: I think if there is some additional statement that is necessary, where she hasn't amply explained something, I will tell her, if necessary, to go on.

Mr. E. H. Bloch: I wonder if the stenographer will read back the last?

The Court: The question was whether Mr. Golos was with you at 58 Barrow Street at the time when any of these calls came in.

A. Yes, on one occasion he was.

Q. And on that one occasion, did you answer the phone?

A. I always answered the phone.

Q. Did you always ask the people who called you their names?

A. If I didn't get the voice right off, but this particular party always started his conversation by saying "This is Julius."

[fol. 1485] Q. "This is Julius"?

A. Yes.

Q. That was on six or seven occasions?

A. I put it at five or six. It might be seven or eight. I don't know exactly the number of them.

Mr. E. H. Bloch: All right. Just pardon me, your Honor.

Q. Miss Bentley, have you written a book recently?

A. Yes, I have written a book.

Q. On what subject?

A. Well, the title may get changed again. I can't tell you exactly what the title is going to be yet.

Q. I didn't ask you about the title. I asked you on what subject?

A. The subject of how a person can become a Communist and how they can be disillusioned and get out again.

Q. You are describing in that book, in a sense, an autobiography?

A. I would say so, yes.

Q. And it deals with the subject of communism, does it not?

A. That is correct, yes.

Q. And has that book been published yet?

A. No, it has not been published.

Q. Have you completed your draft and submitted your draft to the publisher?

A. The draft has been completed. It has not yet been finally O. K.'ed as to what cuts are going to be made.

[fol. 1486] Q. But you have already submitted your final draft to the publisher, have you not?

A. No, there is no such thing as submitting a final draft until the publisher has gone over and made suggestions and cuts, and that is your final thing.

Q. But you have submitted, then, let's say, a tentative draft to the publisher?

A. I have submitted one that is too long and has to be cut and may have to have some more work done on it, yes.

Q. Did you receive any money from the publisher for that book?

A. I received an advance from the publisher, as many authors do, yes.

Q. How much?

A. Let's say——

Mr. Saypol: Is that relevant, if the Court please? I object to it.

The Court: Well, if he doesn't spend too much time on it, I am going to permit him to ask a few more questions, but if he is going to have prolonged questioning, I am going to cut it off.

Q. How much?

A. I received a $3,000. advance from my publisher.

Q. When?

A. Over a period of time. I can't give you exact dates. I would have to get the memoranda to show you.

Q. And under your contract with the publisher, are you [fol. 1487] not to receive more money from him?

A. I can't tell you the exact breakdown on it. When a book goes out and gets sold there is a certain division

of royalties between publisher and author, and it changes from time to time, when you sold more you get more, and so on, so I don't know.

Q. In other words, there is a royalty arrangement; is that right?

A. Yes—well, I understand that is common with everybody.

Q. I am not trying to accuse you of anything, Miss Bentley. I am asking the fact.

The Court: All right, don't get into an argument with her.

A. I didn't believe you were. I just thought you knew that.

Q. You have a royalty arrangement with your publisher, have you not?

A. Yes.

Q. And do you expect to make money out of the sale of that book?

A. I haven't the least idea.

Mr. Saypol: That ought to be obvious.

The Court: All right; is the subject exhausted now?

Mr. E. H. Bloch: Almost.

The Court: One more question?

Mr. E. H. Bloch: Yes.

[fol. 1487-A] The Court: Go ahead.

By Mr. E. H. Bloch:

Q. Have you also lectured on the subject of communism?

A. Yes, I have.

Q. And have you received fees for lecturing on communism?

A. Sometimes I do; sometimes I don't. It depends on the groups I address.

[fol. 1488] Q. Have you received fees for lecturing on Communists?

The Court: She said sometimes she does and sometimes she doesn't. There's your answer.

Mr. E. H. Bloch: With all due respect to your Honor, I submit that the answer was not responsive because I asked

her a very simple question. If she did, she has to say "Yes."

The Court: All right, the answer stands. There is your answer.

Q. All right. Now how many times have you received fees for lecturing on Communists?

A. I couldn't possibly tell you without going back over a two-year period and figure it out. I simply have no idea.

Q. Have you lectured extensively on communism within the last two years?

Mr. Saypol: How high is "extensively"? I object to that.

The Court: Yes, I do not understand that either.

Q. Have you lectured many times during the past two years on the subject of Communists?

Mr. Saypol: I dislike to interrupt—

The Court: Do you know what would be considered [fol. 1489] "many times," Miss Bentley?

The Witness: Frankly, I don't. I do not know the lecture field well enough to know.

Q. All right, how many times during the last two years have you lectured on communism?

A. I just told you that I can't possibly give you an answer unless I go back and look through all my engagements and add them up. I would have no idea.

Q. Now let us get your present recollection. Was it more than two times?

A. It is certainly more than two but I cannot be pinned down to an answer because I cannot stand behind it, I don't know.

Q. Was it more than five times?

A. It was certainly more than five times.

Q. Was it more than ten times?

A. I really don't see where this is getting us——

Mr. E. H. Bloch: I move to strike out the answer as not responsive.

The Court: Yes, I think she is absolutely right, and I think you have got enough of an answer there for the subject that you are after.

Mr. E. H. Bloch: I respectfully except——

The Court: Go ahead.

Mr. E. H. Bloch: —to your Honor's remarks, and may I say to the Court, so that there will be no misunderstanding [fol. 1490] of the purpose of this cross-examination that I am attempting to elicit from this witness the fact that she has something to gain financially——

The Court: You have done it.

Mr. E. H. Bloch: —from testifying.

The Court: You have tried, and I see your purpose, and it won't make any difference whether you get an answer now to ten times or an answer to fifteen times. The witness has stated she has written a book, she expects to get royalties, she has gotten an advance and generally has stated she is lecturing, she has been paid for it. Go ahead.

Mr. E. H. Bloch: I respectfully except to your limitation of my cross-examination on this subject.

The Court: I think I am giving you unusual latitude.

Q. Miss Bentley, how much in all have you received during the last two years from your lectures on communism?

Mr. Saypol: If she knows.

A. Again it is impossible to tell you. I don't carry figures in my head. I haven't the least idea.

Q. Do you have a bank account?

A. Yes, I have a bank account.

Q. And did you deposit the fees that you received for [fol. 1491] your lectures in your bank account?

A. Well, I have several bank accounts and deposit sometimes in the bank accounts; sometimes I cash it for other money, to go on to the next lecture trip.

Q. Can you give us even the roughest kind of an idea——

A. No, I cannot.

Q. —of how much money you have received from lectures on communism in the last two years?

A. I am sorry, I have told you before I do not know how many lectures and I have no idea on the amounts of money.

Mr. E. H. Bloch: Your Honor, will you bear with me again for one moment?

The Court: Go ahead.

(Mr. E. H. Bloch confers with associates.)

Q. Miss Bentley, how many drafts of your book did you submit to your publisher?

A. I don't think I had drafts. It is a question of adding chapters, reading them—I haven't the least idea of what you mean by "how many drafts."

Q. At any rate, you submitted various chapters of your book to the publisher, is that correct?

A. No, it wasn't done that way at all.

Q. Did you submit one chapter at a time?

A. No, it wasn't done that way at all. I was working in [fol. 1492] the country and whatever I had ready in rough form, he would take. Sometimes I maybe had two drafts; it depended.

Q. Did you, any of the written material that you sent to your publisher in connection with your autobiography dealing with your work in the Communist Party, ever write down anything about this telephone conversation that you related where somebody called up a few times asking for Mr. Golos and stating on the wire, "This is Julius"?

A. Yes.

Q. When?

A. I haven't the least idea when that particular part of the book was written, but that was put into the book very definitely. Whether it is still in or whether it has been cut out I don't know.

Q. I would like you, please, Miss Bentley, to test your recollection as best you can and tell us, if you can, the first time you say you submitted evidence of this telephone conversation that we are talking about to your publishers.

A. I haven't the least idea. I was dealing with a book haphazard. I can't tell you on that.

Q. Was it within the last year?

A. Let us see, the last year? It probably would have to have been within the last year because that is when I have been writing it down, probably, yes.

[fol. 1493] Q. Have you any copies of the drafts that you submitted to your publisher?

A. No, I don't believe I do. I think there is one tucked away in storage but I don't have any with me, no.

Q. Have you any written material in your possession now——

A. No.

Q. Wait a second; I haven't finished the question.

I am assuming you ought to have some written material. Have you any written material in your possession now from which you can show this Court and jury that you wrote down to your publisher about this telephone conversation?

A. I don't understand your question. I have just informed you I haven't it in my possession now. It is the same question you asked me before, isn't it?

Q. I just wanted to get an answer.

Mr. E. H. Bloch: That is all.

Redirect examination.

By Mr. Saypol:

Q. Miss Bentley, I take it that the material for your book was written in narrative form as you went along with your publisher and the material submitted to him, is that correct?

A. That is correct. But the reason it was hard for me to answer the previous question was that I didn't start the beginning and work forward; I started the middle and went [fol. 1494] backward and then forward, and wrote whichever way was the easiest.

Q. Incidentally, are you here pursuant to subpoena?

A. I am.

Q. Where were you yesterday morning at this time?

A. In San Juan, Puerto Rico.

Q. Did you fly here last night in order to give your testimony today, pursuant to that subpoena?

A. Yes, I did.

Q. Now, Mr. Bloch has asked you some questions about these telephone calls from Julius and the fact of their incorporation in your book. Do I understand correctly your purpose in including reference in that book was to illustrate the method of maintaining contacts between couriers and agents in this system?

Mr. E. H. Bloch: I object to the form of the question, your Honor, and I object to it upon the ground that it is not proper redirect.

The Court: Well, I am not accepting it for the purpose of establishing it as a fact, that that is the purpose, but I

am accepting it on the basis that it may establish that she did include it in her book.

Mr. E. H. Bloch: I respectfully except.

A. That was partly it. The other reason was to show the incredible things that Communists will go through in order to carry out their jobs because it meant that when I was [fol. 1495] called at 2 in the morning I often had to go out and go many blocks in the cold to get a pay telephone to call Mr. Golos.

Q. Do I understand from that that sometimes when you received calls of this type, whenever the occasion required it, you would in turn go immediately to a public telephone to get in touch with Mr. Golos?

A. That is correct. It was considered unsafe for me to call out of my own telephone.

Q. In other words——

The Court: All right, I think we have that purpose now.

Q. Now, Mr. Bloch has made reference in his examination of you to lectures by you. For what kind of groups have you lectured?

A. I have lectured for civic groups, the American Legion, for religious groups, for the Air Corps, the Navy and people of that sort.

Q. Mr. Bloch has made reference in his examination to the subject of your book and the subject of your lectures as relating to communism. It is not the fact that your subject matter relates to your experiences as a Soviet courier as it is connected with the Communist Party of America?

A. That's right.

Mr. E. H. Bloch: If the Court please, I object to the form of the question.

[fol. 1496] The Court: Overruled.

Mr. E. H. Bloch: I object to——

The Court: You asked her what the purpose of the book was.

Mr. E. H. Bloch: And she answered.

The Court: All right. He has a right on redirect to enlarge on the subject a bit.

Mr. E. H. Bloch: I respectfully except.

The Court: Go ahead.

Mr. Saypol: Mr. Reporter, will you be good enough to read that question?

(Record read.)

Q. And what you have described in these lectures and in your book is the connection between the Communist Party of America and its objective and activities in recruiting agents and in obtaining material for Soviet Russia?

A. That is correct.

Mr. E. H. Bloch: Now, if the Court please—I object to the question as to form, I object to it as to substance. I think it is incompetent, irrelevant and immaterial.

The Court: All right, we will have no more on the subject. I think she has characterized the book.

Mr. Saypol: That is all I want, is the answer to this question, and I am through.

[fol. 1497] The Court: No, we have already got it. She has characterized the book. We know generally what the purpose of the book was. I think you have enough on that subject.

Mr. Saypol: Will you bear with me for just one second?

The Court: Go ahead.

Mr. Saypol: I did not make reference in my prior question to the recruiting of agents.

The Court: I understand.

Mr. Saypol: That is why — wanted the answer to that question.

The Court: I consider that phase purely as a collateral matter, dealing with details.

Mr. Saypol: I think I put enough in. My adversary referred solely to the matter of communism and I wanted to show the real connection of the part of Miss Bentley.

Mr. E. H. Bloch: I would like to ask a few more questions and I am going to ask the Court to give me some latitude here because there was one subject—and it is not going to be long—which I forgot to cover in my cross. It was my mistake. It was an inadvertence on my part. I am going to promise the Court that I am not going to be long.

[fol. 1498] Recross-examination.

By Mr. E. H. Bloch:

Q. What——

The Court: Before you get into that, let me make sure that I have understood Miss Bentley's answers to what I consider the main issue and the main purpose of her testimony.

By the Court:

Q. You said, did you not, Miss Bentley, that you had knowledge of the instructions and the teachings of the Communist Party officials to the members of the Party?

A. Yes, that's right.

Q. And you had personal knowledge of that between the years of—what?

A. Personal knowledge between the years I was working with the Party, which would be between '35 and '47.

Q. Very well. Now, with particular reference to the instructions concerning help or aid to Russia, did I understand your testimony that the Communist party officials instructed the members of the Party orally and in writing, in a general way, to do everything possible to aid Russia?

A. That's correct, yes.

The Court: Very well.

By Mr. E. H. Bloch:

Q. Miss Bentley, what is the name of your publisher?

A. Devin Adair Company.

[fol. 1499] Q. Will you spell it?

A. D-e-v-i-n A-d-a-i-r.

Q. Where are they located?

A. 23 East 26th Street.

Q. 23 East 26th Street?

A. That's correct.

Q. Now Miss Bentley, what period did you say you went into this underground work? During what period did you go?

A. In 1938.

Q. Until when?

A. Well, I was in it until I finished in 1947. Actually in 1947 I stopped my contacts with the Communist underground.

Q. Now during that period did you attend any regular Communist Party meetings?

A. No, I didn't.

Q. So you do not know, do you, Miss Bentley as of your own knowledge what went on at any of those meetings, do you?

A. If you mean from '38 on, no.

Q. That's right. How many—suppose I ask you this: Were there what is commonly called branches in the Communist Party of the United States?

The Court: But she continued as a member of the Party.

Mr. E. H. Bloch: Yes.

The Witness: I continued as a member of the Party but I simply was not attached to branches. That is not the word that was used.

Q. What is the word?

[fol. 1500] Mr. Saypol: Give her a chance.

A. The word, in case you don't know, there were two kinds, shop units and street units. And street units were pretty generally called branches, at least in those days.

Q. Let us see; there were shop units and there were street units, is that right?

A. That is correct.

Q. And when you went in——

A. And there were some specialized units, too. There were trade units.

Q. But these were units—the common term was "units," is that right? I say, the common term that was applied——

A. Oh, I am sorry, I thought you said "the common term."

Q. The so-called groups were units?

A. That is the word that was pretty generally used in this country, yes.

Q. And that you would say was from 1938 to about the time that you got out, is that correct?

A. No, I said that was a system in the Communist Party

for people who were not too far underground—at least in the days that I was in.

Q. That is from 1938 to——

A. No, I went in in 1935.

Q. I beg your pardon, from 1935 until 1947.

A. That is right—yes, sometimes your underground [fol. 1501] people did go and meet groups. I handled one group in Washington that had unit meetings.

Q. But by and large, when groups of members of the Communist Party met, they met as a unit?

A. I can't give you specific figures on that. I don't know how many people were disconnected and how many people were attached to units. I don't know the figures on that.

Q. Did you know the number of units that were operating in New York City during any of the years, any of the years, from 1938—from 1935 to 1947?

A. I may have once but I don't remember it now.

Q. Could you tell us how many members there were of the Communist Party in any of the years——

A. Impossible to tell you.

Q. Wait—from 1935 to 1947.

A. I am sorry but I didn't work in the division of the Communist Party that kept track of statistics. I wouldn't have known that.

Q. Now let me ask you this question, Miss Bentley. Did the Communist Party of the United States have a constitution?

A. I think they drew up a so-called constitution at one point, yes.

Q. When you say "at one point" could you tell us what period that covered?

A. No, I am sorry. We didn't pay much attention to the [fol. 1502] constitution since again it was one of those paper affairs.

Mr. E. H. Bloch: I move to strike it out as not responsive.

The Court: No, I will let it stand.

Q. Did you ever see a constitution of the Communist Party of the United States while you were a member of the Communist Party?

A. That I don't remember. I may have——

Mr. Saypol: Wait. Will Mr. Bloch distinguish between Miss Bentley's open membership and the time she was in the underground?

Mr. E. H. Bloch: I mean at any time, yes.

We are not talking about a constitution of an organization——

The Court: You are going to finish up with this witness before lunch, aren't you?

Mr. E. H. Bloch: I am going to try to, your Honor.

The Court: All right.

Mr. E. H. Bloch: This is the part I missed upon cross, you see. That is why I have asked you to give me some latitude.

A. I can't tell whether I saw a constitution or not. I probably did but I don't recall it offhand.

Q. From 1935 to 1947 you say you never saw a constitu-[fol. 1503] tion?

A. You misquote me. I said I may have seen it. I don't recall now one way or the other. There was no reason actually why I probably should have seen it.

Q. Even from 1935 to 1938?

A. But why? It was only a paper document that no one lived up to.

Q. And you knew that in 1935 when you entered, that the constitution was just a paper document?

A. I don't think I was aware that they had a constitution in 1935; I don't know.

Q. Were you aware that that organization had a constitution in 1936?

A. I told you I haven't the least recollection of constitutions or what they were at all. I may have seen it or I may not; I don't know.

Q. Let me ask you this—try to refresh your recollection about any constitutions that you may have read.

A. I told you before and I can only repeat it, I may have seen it, I may have not. I can't place anything about it. There is no us*ing* asking me three or four times when I have already answered you.

Q. Is there anything else you want to say?

The Court: What is that? What is the question?

Mr. E. H. Bloch: I said "Is there anything else you want [fol. 1504] to say?" I do not know whether she has finished.

The Court: Now you do not want her to start and give you——

Mr. E. H. Bloch: All right.

The Court: —a voluntary statement, do you?

Mr. E. H. Bloch: No. I thought she was going to finish up with something else.

The Court: You have to be very careful about that kind of question, "Is there anything else you would like to say."

Mr. E. H. Bloch: I am not worried about what she is going to say. I think she has given her testimony here.

Will you bear with me one second (examining paper).

Q. Miss Bentley, you say you saw the FBI for the first time in 1945?

A. If you mean I went in and talked to them, yes.

Q. Talked to them about Communist activities, didn't you?

A. In August, 1945, yes. I told you that.

Q. And you have talked to them many, many times since, have you not?

A. A good many times, yes.

Q. When was the first time that you told the FBI about [fol. 1505] this telephone conversation—"This is Julius"—I do not want to go into all the details. You know what I am referring to?

A. I gave the entire story, including Julius and the telephone calls and all to the FBI when I went into them at various successive meetings. We couldn't get it all done at once. It would have been, I guess, in the fall of 1945, along in there.

Q. Did you give it to them in the fall of 1945 this specific telephone conversation?

A. It must have been because the basic material that I had to give to them was in that period, so it must have been included in there.

Q. And that was the first time you went down to see them?

A. No, it would be impossible to tell you.

The Court: She just answered. She said she couldn't give the whole story the first time but it was in successive periods around that time.

Q. How many times in all did you see the FBI in the fall of 1945?

A. I haven't the least idea.

Q. More than ten?

A. There is no use my trying to guess at all these things —more than five, more than ten. I haven't the least idea but it was quite frequently and I can't give you any closer answer than that.

Q. All right, we will take your answer if that is the best. [fol. 1506] And how many times in 1946—how many times did you see the FBI?

A. I couldn't possibly guess, but, again, very, very frequently.

Q. And how about 1947?

A. The same answer.

Q. And how about 1948?

A. The same answer.

Q. And how about 1949?

A. The same answer.

Q. And how about 1950?

A. The same answer.

Q. Have you ever been paid by the Government of the United States for any of the evidence that you have disclosed to it?

A. No.

Q. Not one penny?

A. No, not one penny.

Q. Do you do anything for a living outside of writing or lecturing now?

A. You mean at the present time?

Q. Yes.

A. I am taking a vacation right now.

Q. You came on from Puerto Rico?

A. That is correct.

Q. Well, prior to the time you went on vacation?

A. Certainly. I had a teaching position for one year, I lectured and I wrote a book.

Q. All right. Now have you—is this the first trial that you have testified with respect to——

A. This is the——

Q. —to any aspects of the work that you did in connection with communism?

A. Well, all three—this is the third trial; in all, three [fol. 1507] trials I have testified to my work in communism, yes.

Q. Did you testify in the trial of William Remington?

A. I did.

Q. And did you testify in the trial of Abe Brothman?

A. I did.

Q. Do you remember testifying at that trial that you succeeded a man—or you preceded a man by the name of Harry Gold?

A. I don't think I could possibly have testified that because I didn't know Harry Gold. I think what I did was describe the process by which I handed Abe Brothman over to another contact, who it seems to have turned out to be Harry Gold.

Q. Do you know whether Harry Gold was a Communist?

A. I am sorry, I don't know Mr. Gold. I didn't read his testimony or I wasn't in court when he testified. I know very little about him.

Q. Didn't you talk to Mr. Gold, Harry Gold?

A. I have never met him, I do not know anything about Harry Gold. I never met him. I never talked to Mr. Golos about him. I didn't know that he was existing.

The Court: And wasn't it generally the policy of those engaged in this kind of work not to talk very much about the [fol. 1508] others that are engaged in similar kind of work?

The Witness: That is correct. I would even doubt it seriously if Mr. Golos himself knew who Mr. Gold's identity was.

Mr. Saypol: I want to serve warning—just a moment, if your Honor please. I want your Honor to notice that I refrained entirely in my direct examination from this subject.

The Court: All right.

Mr. Saypol: But if counsel opens the door I will have to go entirely into the circumstances——

The Court: I think counsel is closing the door right now.

Mr. Saypol: Your Honor knows what I mean.

Mr. E. H. Bloch: Just one further question.

By Mr. E. H. Bloch:

Q. Didn't you testify in the Brothman trial that Harry Gold succeeded you as a courier to Brothman?

A. No, I did not because I didn't know of Harry Gold's existence. I simply testified how I made arrangements for him to be turned over to another contact. I didn't know who the contact was, what he looked like. I didn't have the least idea about it.

Q. Did you mention the name Harry Gold in the Brothman trial?

A. If somebody asked me if I knew Harry Gold I pre- [fol. 1509] sumably answered back I did not know Harry Gold.

Q. Now in addition to testifying in these three trials—this is the third, is that correct?

A. This is the third, that is correct.

Q. —have you also testified before various Congressional Committees?

A. Yes.

Q. How many?

A. Oh, good heavens, I don't know. Let me see. One, two—oh, four or five, roughly.

Q. Before the House Un-American Activities Committee?

A. That is correct.

Q. On at least two occasions?

A. Well, if you me-n two occasions—I was down there once for three weeks—do you count that as one occasion?

[fol. 1510] Q. You mean testifying for three weeks or preparing yourself for your testimony?

A. Off an- on——

Q. I say, testifying for three weeks or preparing yourself for your testimony?

A. Testifying off and on.

Q. And did you testify before any other House Committee?

A. Yes. I don't know the title of it. I think it is Immigration and Naturalization. Senator McCarren is the head of it.

Q. Were you——

Mr. E. H. Bloch: Withdrawn.

This is just the last two questions, your Honor. I am aware that everybody is hungry and I assume you want me to finish this—I can see that.

Q. Now Miss Bentley, did you follow the indictment in the trial of the leaders of the Communist Party here recently?

A. Not very closely, no. I think it was going on when I was out of New York and it wasn't in the papers too much where I was traveling.

Q. When you say "out of New York," were you in the United States at the time?

A. I was in the United States.

Q. Where?

A. Oh, heavens, I don't know when the trial took place [fol. 1511] even. If you will tell me when it took place I will tell you where I was.

The Court: Well, you have answered the question.

Q. Did you testify at that trial?

A. No, I did not.

Mr. E. H. Bloch: That is all.

Mr. Saypol: May I ask the last question and the last answer be stricken as irrelevant? I do not see what inference can be drawn from them.

The Court: I will strike that.

Mr. E. H. Bloch: If the Court pleases, before you strike that, may I just state the reason for asking it? It may be—I am not going to make an assurance to the Court but it may be in the course of my cogitation and cerebration in connection with introduction of evidence of my defense, I might introduce the indictment of the Communist leaders and also parts of the record to indicate that this witness did not testify because the theory upon which that case was tried, taken in conjunction with this witness's testimony, might have some bearing upon her——

The Court: You know very well that I won't permit it.

Mr. E. H. Bloch: If you tell me——

The Court: You know very well it is outside the scope [fol. 1512] of the issue in this case. You know very well that I will not permit any such thing to happen here.

Mr. E. H. Bloch: On the question of——

The Court: And furthermore this is as good a time as any to tell the jury, so that there is no confusion whatsoever as to the purpose for which this testimony was taken, that it is not to establish the guilt here of the crime charged because any of them might have been members of the Communist Party, but it is to show a link, as the Government contends, exists between aiding Russia, which is an element required by the indictment, by the statute and mentioned in the indictment, and being members of the Communist Party, just as if being a member of the Democratic Party or the Republican Party or being a member of the Elks Club or the Masons would furnish a link or give a motive or prove intent of any of the elements necessary in the statu-e and set forth in the indictment, and that is the only purpose for which it is taken, and you are not to determine the guilt or innocence of any of these defendants because you think they are communists. That is not what they are charged with here.

Mr. E. H. Bloch: If the Court pleases, in reference to the [fol. 1513] last question which your Honor struck, may I say and make it as clear as I can to the Court that the only reason I would think of introducing that kind of testimony is to impeach the credibility of this witness and not because I thought the issues of that trial have any relationship whatever to the issues in this trial.

The Court: Yes, but when I think that under the guise of impeaching the credibility of a witness you are dragging in not only the kitchen sink but the kitchen tub as well, I am going to stop it.

Mr. E. H. Bloch: Well, if the Court please, that is why judges and lawyers often disagree because we think differently, with different counsel. That is what makes a trial interesting, your Honor.

Mr. Saypol: Well, if everybody's hunger will await for about two minutes I will finish with the witness. Will your Honor allow me?

The Court: Go ahead.

Mr. Saypol: I am hungry, too, if the Court please.

Redirect examination.

By Mr. Saypol:

Q. Miss Bentley, Mr. Bloch asked you about Abraham Brothman. Was he one of the members of the Communist Party who supplied you as a currier with industrial information for transmission to Soviet Russia?

[fol. 1514] A. Yes, he was.

Q. Mr. Bloch asked you about William W. Remington. Was he one of the members of the Communist Party who supplied you with information from Government sources for transmission to Soviet Russia?

A. Yes, he was.

Q. Mr. Bloch asked you some question about a Constitution. Is it not the fact that your meetings with people like Brothman and Moskowitz were held at odd places at night, deserted places?

A. Correct.

Q. And those meetings usually were brief?

A. Yes.

Q. They took only a short time?

A. As short as possible, yes, sir.

Q. Was it part of your ritual to carry a Constitution in your pocket when you went to get information from these people at these meetings?

A. No, certainly not.

Q. Is it not a fact that the Constitution was intended as a foil for the open party and was not considered at all in the underground?

Mr. E. H. Bloch: That is objected to.

The Court: I will sustain that.

Q. Was any consideration at all given to the Constitution [fol. 1515] in the underground?

Mr. E. H. Bloch: That is objected to.

The Court: We have it.

Q. In your activities?

Mr. E. H. Bloch: That is repetitious.

The Court: I agree.

Mr. Saypol: On that ground then, I desist, and I wish to thank you, Miss Bentley.

The Court: I take it that is all.

(No response from defense counsel.)

The Court: All right, Miss Bentley, you are excused.

(Witness excused.)

The Court: We will recess for lunch until 2.30—and I hope we all have a good lunch. I think we will need it.

(Recess to 2.30 p. m.)

[fol. 1516] Afternoon Session

James S. Huggins, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. Mr. Huggins, where do you reside?

A. Laredo, Texas.

Q. Did you come up to New York this morning pursuant to subpoena from Laredo, Texas?

A. Yes, sir.

Q. What is your occupation, Mr. Huggins?

A. Immigration inspector, Immigration and Naturalization Service.

The Court: We can't hear you.

The Witness: I am an Immigration inspector in the Immigration and Naturalization Service.

Q. Did you produce pursuant to that subpoena certain original records of the Immigration and Naturalization Department of the Government concerning one Morton Sobell?

A. Yes, sir.

Mr. Kilsheimer: I ask that this be marked Exhibit 25-A for identification, your Honor.

(Marked Government's Exhibit 25-A for identification.)

Q. I show you Government's Exhibit 25-A for identification and ask you if that is the record which you produced pursuant to this subpoena?

A. It is.

[fol. 1517] Q. Is this a record which is kept in the regular course of the business of the Immigration and Naturalization Service of the United States Government?

A. Yes, sir.

Q. And is it in the regular course of business that this record is made?

A. It is.

By the Court:

Q. Was the record made at or about the time that the events recorded on that record transpired?

A. Yes, sir.

By Mr. Kilsheimer:

Q. Is this your signature on the back of this card, Mr. Huggins (handing)?

A. Yes, sir.

Q. There is another signature appearing on this card. Whose signature is that?

A. That is the signature of the man of whom this record was made.

Q. That man's name is——

A. Morton Sobell, I believe.

Mr. Kilsheimer: At this point, your Honor, the Government renews its offer of this exhibit in evidence, and if your Honor will receive it we ask that there be substituted therefor the authenticated copy which we had yesterday, 25 for identification (handing to Mr. Phillips).

Mr. Phillips: (After looking at tendered exhibit) May I ask a few questions, if your Honor please?

[fol. 1518] The Court: Go ahead.

By Mr. Phillips:

Q. The script part of this card is in your handwriting, is that right?

A. It is.

Q. You were at the time in Laredo, Texas, is that right?

A. Yes, sir.

Q. And Morton Sobell was there at the same time, is that right?

A. That is right.

Q. And did you speak with him or did you speak with other people?

A. I spoke with him.

Q. The information furnished to you on the face of the card on which the name Morton Sobell was written: was that information furnished to you by Mr. Sobell (handing)?

A. Right.

Q. At the same time were there any persons from Mexico there, from the state of Mexico?

A. Yes, sir.

Q. And those persons were in an official capacity?

A. Yes, sir.

Q. How many such persons were there?

Mr. Kilsheimer: If your Honor please, I believe this is cross-examination and does not go to the question of the admissibility of this document.

The Court: No.

Mr. Phillips: It is laying a foundation. If your Honor [fol. 1519] please, it is laying a foundation for an objection to some parts of this card.

The Court: Why don't you get right to the point without the preliminary questions, Mr. Phillips? Ask him who those people were and whether anything reported on there is what these people told him.

Mr. Phillips: I am coming to that. I wasn't there and therefore I don't know exactly who were there. I am getting it from this witness.

The Court: I know you weren't there; neither were any of us there except your client and so let us find out about this.

Q. How many officials from Mexico were there?

A. Roughly I would say—I don't remember exactly, but I would think there were about nine.

Q. And they told you some of the matter that is contained in this card, is that right?

A. They didn't tell me anything that is contained on there. No, they didn't tell me anything that is contained on that card.

Q. I direct your attention to the script at the bottom of the face of the card which does not contain Sobell's signature. Do you notice those words?

A. Yes.

Q. Just read them.

A. Yes, sir.

[fol. 1520] Q. That is in your handwriting as well?

A. That is right.

Q. Is it a fact that the information furnished to you contained in those words was furnished to you by the Mexican authorities, is that right?

A. No, sir.

Q. Well, you didn't speak to the Mexican authorities at all?

A. Yes, sir.

Q. Well, didn't you speak about Sobell to the Mexican authorities?

The Court: All right, now, you are getting into cross-examination.

By the Court:

Q. Now, where did that information come from that counsel has just referred to?

A. That is something I put on there myself from observation.

Q. That you made?

A. That I made.

Q. Is that something that is customary for you as an Immigration inspector to do?

—. That is right.

Q. In cases of similar character?

A. Yes, sir.

Q. Is it part of your duty to do that?

A. It is.

Q. Do you usually do that in the regular course of your business?

A. I do.

By Mr. Phillips:

Q. I still ask whether the information contained in those [fol. 1521] words was given to you by the Mexican authorities or the Mexican police or whatever they were?

A. I don't remember that it was. In fact, I would say that it was not.

Q. Well, you were not in Mexico at the time when Sobell was there?

The Court: All right, now we are getting into cross-examination. You repeat your objection. I think we have enough now. We have laid a foundation now for the introduction of the record itself. Now anything else reserve for your cross-examination proper.

Mr. Phillips: Won't you allow me one or two more questions?

The Court: All right, one or two more. Go ahead.

By Mr. Phillips:

Q. It is true that you were not in Mexico; isn't that right?

A. That is right.

Q. So the first contact you had with Sobell was in Texas; is that right?

A. Correct.

Q. You therefore do not know of your own knowledge what occurred in Mexico?

A. Naturally.

Q. And any information on this card as to what occurred in Mexico was imparted to you by the Mexican authorities; is that correct?

[fol. 1522] The Court: The witness said no, it was based on his own information.

A. I said that the notation at the bottom, which I placed on there, was through an observation of my own; that all the data that is contained on that was furnished by Mr. Sobell.

Q. All the data above that?

A. All the data before those three words that you were referring to there.

Mr. Phillips: I object to the introduction of this card, except that part of it, the face of it, which is signed by Sobell, but the other part is entirely inadmissible.

The Court: Let me see it.

Mr. Kuntz: Particularly that portion, if your Honor pleases, if I may interject, with your Honor's permission, particularly the portion that the witness now testified he put down there as his own observation.

The Court: It is perfectly all right, if it is part of his duties to do so, that goes to the weight of the evidence; if it is part of his duties to do so and it is made in the regular course of business and it is part of his regular course of business to do that, it is admissible under the statute.

Mr. Phillips: If your Honor pleases, I am not question-[fol. 1523] ing this man's execution of his duty. I am not criticizing him at all.

The Court: What you are talking about now goes simply to the question of weight. Now, you have made an objection to the admissibility; in connection with that your objection is not a good one.

You had better give me a copy I can read. I can't read the handwriting there.

(After reading) Your objection is overruled. The document is admitted.

Mr. Phillips: Before your Honor rules finally, may we come to the bench so that I can give you some additional thought in my mind?

The Court: No, I know the subject matter thoroughly; nothing further.

(Government's Exhibit 25-A for identification received in evidence.)

The Court: Now, have you any objection to the substitution of the copy for the original?

Mr. Phillips: No, let the original be here, if your Honor please. I prefer it.

The Court: All right, the original will be here. Mr. Kuntz, is there a difference of opinion there?

Mr. Kuntz: I personally don't see any purpose, but I [fol. 1524] bow to the superior wisdom of my colleague.

The Court: All right, keep the original available, but the copy will be considered as marked without objection.

Do I understand that it is a copy of the original?

Mr. Kuntz: No objection on that score.

The Court: It will be received with the same force and effect as if the original had been marked.

Mr. Kilsheimer: Concerning the original document, will it be acceptable if we substitute a photostatic copy of the original, so that the witness can take this back with him?

Mr. Phillips: The photostat is O. K.

The Court: All right, so that will be marked 25, the photostat will be marked 25, and the copy which you made will be marked 25-A.

Mr. Kilsheimer: This copy, the authenticated copy, had been marked Exhibit 25 for identification yesterday.

The Court: It will now be received in evidence.

Mr. Kilsheimer: Yes, sir.

Mr. Phillips: Does your Honor understand and is it [fol. 1525] understood that my objection went to the reverse side of the card, not the part on which Sobell's signature exists?

The Court: That is correct.

Mr. Phillips: Because I don't want to seem captious.

The Court: I overruled your objection and admitted the entire document, because each and every part of it was made in the regular course of business.

Mr. Phillips: I said I didn't want to be misunderstood, that is all.

Mr. Kilsheimer: Before I read parts of this to the jury, may I examine the witness a little further from the card?

The Court: Go ahead.

By Mr. Kilsheimer:

Q. By whom was the defendant Sobell brought into your office at Laredo, Texas?

A. He was brought there by the Mexican Security Police.

Q. Were there any agents of the United States present in your office when Sobell was there?

A. There were.

Q. Did they do anything with Sobell in your presence?

A. No, sir.

Q. Did they place him under arrest?

[fol. 1526] A. Not until—when I was through making the manifest records, he left the office; they took him in custody and left the office with him.

Mr. Kilsheimer: I would like to read portions of this card to the jury.

The Court: All right.

Mr. Kilsheimer: This card is marked "A manifest, the port of Laredo, Texas," and it is dated August 18, 1950. The family name is Sobell; the given name is Morton; accompanied by wife, Helen L. Sobell. His place of birth is New York City; age, 33; last permanent residence, 164-17 73, Flushing, Queens, New York. Ever in U. S.? It has "all life until about two months ago." At the bottom of the card is a notation "Deported from Mexico." On the reverse side of the card, that is, under Remarks and endorsements, "Sworn before manifesting. Brought to Immigration office by Mexican police." The card is signed on the lower lefthand corner by Morton Sobell and on the righthand side by the witness, J. S. Huggins.

May I exhibit that to the jury?

The Court: Anything further?

Mr. Kilsheimer: I have no further questions, your Honor.

[fol. 1527] Mr. Huggins: Could I have a copy?

The Court: Will you give him a copy, or hand that back.

(Original exhibit handed to Mr. Kuntz by a juror.)

Cross-examination.

By Mr. Kuntz:

Q. Mr. Huggins, I see that this card, Government's Exhibit 25-A, is partly typewritten and partly in longhand, is that correct?

A. That's right.

Q. And I presume that the handwritten part is in your handwriting?

A. It is.

Q. Now when was the typewritten part put in?

A. It was all put on there during the presence of Mr. Morton in the Immigration Office.

Q. Now, did you get the information——

A. Mr. Sobell, I meant to say, instead of "Mr. Morton."

Q. Did you get the information contained in the typewritten part from Sobell or from records that were given to you by the FBI agents?

A. The information that I placed on there, with the exception of the part "deported from Mexico" was furnished by Mr. Sobell, that is, the——

Q. I would like——

The Court: Go ahead; what were you going to say?

[fol. 1528] Mr. Kuntz: I am sorry.

A. (Continuing) That is, the date and place of birth, his marital status, his occupation, his last residence in the United States and when he was last in the United States—that was all furnished by Mr. Sobell.

Q. Now what I want to know is, did you typewrite it yourself?

A. I typewrite it—typewrote it myself.

Q. Now I notice that on Government's Exhibit 25-A you have typewritten "Morton Sobell," is that correct?

A. That's right; that is according to instructions.

Q. And then to the right of that I notice that you have "Accompanied by wife" written out in your handwriting.

A. That is right.

Q. Now does that refresh your recollection, or let me put it this way, isn't it a fact, Mr. Huggins that the typewritten part "Morton Sobell," or "Sobell, Morton" was already prepared and that when you spoke to Sobell and he told you he was accompanied by his wife, that you wrote in your handwriting "Accompanied by wife"?

A. No, sir.

The Court: You mean "No, sir" it did not happen or——

The Witness: I mean that it was not already prepared. I believe that is the way I understood him.

[fol. 1529] Q. All right, I will take that as an answer. I notice also that on the next line the name "Helen L. Sobell" appeared in your handwriting; is that correct?

A. That's right.

Q. Now then, I see on the next line that "New York City,

N. Y." was typewritten—I had better get closer to you, if you don't mind (moving nearer to the witness box).

It was typewritten (indicating)?

A. That is right, yes, sir.

Q. And that the very next item, "Age, 33" was written by you?

A. Yes, sir.

Q. That was your handwriting?

A. Yes, sir.

Q. And "Sex, M," written by you?

A. By me.

Q. Is that right?

A. Yes, sir.

Q. And then I see, "Occupation, Elec"—E-l-e-c—"E-n-g-r."—I presume it stands for electrical engineer—that is typewritten, isn't that right?

A. That's right.

Q. Now you say that you were at the typewriter and getting the information from Sobell and as he was giving it to you you typed, I suppose?

A. Yes, sir.

Q. And I presume you are about like myself, one of the two fingered operators?

A. That's right.

Q. And will you tell this jury what occasioned you to stop the typewriting, pick up your pen and put in the word [fol. 1530] "wife" instead of typing that out?

A. I didn't know it. Mr. Sobell's wife was not present during that time.

Q. No, no, wait a second, Mr. Huggins: I do not want to mislead you.

The Court: Go ahead, answer the question.

A. His wife was not present. I didn't know that she was out there after that—after that manifest—after the part that is typed on there, the rest of it was completed, I still maintain the rest of it was completed during the presence in the office of Mr. Sobell.

Q. I didn't question you on that. I just wanted to find out this: I see on the top of this card some red stamps, "Laredo, Texas, August 18, 1950". I presume you picked

up a stamp, put it on the stamp pad and stamped those two items on there, is that right?

A. That's right.

Q. You had Sobell right there, didn't you, with you?

A. Yes, sir.

Q. And you, so far as you were concerned, you were a stranger to this matter.

Mr. Saypol: He wasn't very much of a stranger. He was doing his duty as an official of the United States.

Mr. Kuntz: I think the witness understood my question.

[fol. 1531] Mr. Saypol: Presumably someone——

Mr. Kuntz: Or if you don't just say so.

Q. You were a stranger to the Sobell matter, weren't you?

Mr. Saypol: No. I object to the question as to form.

The Court: Did you know Sobell before?

The Witness: I never had seen Mr. Sobell before, no, sir.

Q. Did you know anything about Sobell's coming there?

A. I had read in the papers, certainly.

Q. Read in the papers where?

A. The Sobell case. In fact we had——

Q. When was that?

A. We had a lookout on him to prevent his departure from the United States.

Q. That is just exactly what I wanted to get at. If I had known you were going to give it to me that way I wouldn't have wasted a lot of time. You were expecting him, weren't you?

A. Yes, sir.

Q. Now on the basis of your expecting him, will you tell this jury whether it wasn't a fact that the typewritten part of this card was prepared before Sobell came into your office?

The Witness: Gentlemen of the Jury, it was not prepared prior to the time that Mr. Sobell——

[fol. 1532] The Court: Don't forget the "ladies".

The Witness: I beg your pardon, ladies and gentlemen, prior to the time that Mr. Sobell came into the office, no part of it was prepared, prior to the time that he came into the office.

Q. Then am I to understand or are we to understand that as you got the information from Mr. Sobell you two-fingered yourself on the typewriter and filled out the typewritten portion, is that right?

The Court: He said that about six or seven times.

Q. I ask you again, when you finished typing the name on, "Sobell, Morton" did you then pick up your pen and ask him who he was accompanied by?

A. I don't remember when I did.

Q. But you do notice that the handwritten part says "Accompanied by wife"?

A. That was information that he gave me during the time that he was in my office.

Q. Now then I take it that your answers would be similar in regard to all the other typewritten portions and the other handwritten portions, is that correct?

A. Will you repeat your question, please?

Mr. Kuntz: Will you please read it?

(Question read.)

[fol. 1533] The Court: By that you mean that it was all given to him in the presence of Sobell whether it was handwritten or typewritten?

The Witness: Right.

Q. Now, I understood you to say, Mr. Huggins, that you knew about this matter from having read it in the newspapers?

The Court: He says he knew about the name.

Q. Yes. About the Sobell matter by reading it in the newspapers, is that correct?

A. I will say that we had a lookout on him prior to the time that he came into the office.

Q. Do you know whether any FBI men went into Mexico as part of this lookout?

Mr. Kilsheimer: I object to that, your Honor.

The Court: I will overrule it.

A. I don't know whether they did or not.

Q. Did you speak to any of the FBI men?

A. I did.

Q. Did you ascertain from speaking with them that any of them had gone into Mexico?

A. I didn't.

Q. Did you hear any of the FBI men say that they had gone into Mexico?

Mr. Kilsheimer: I object to that.

The Court: I will have to sustain that. We are getting very far afield.

[fol. 1534] Mr. Kuntz: I respectfully except.

Q. Did you ask Sobell before you wrote down those words "Deported from Mexico" whether he was deported from Mexico? Did you, yes or no?

A. I don't remember that I did. May I make one statement, though?

The Court: Yes.

Mr. Kuntz: No, no. I suggest——

The Witness: Prior to the time that this manifest was prepared it was explained to Mr. Sobell that our regulations required that any person who is being deported from Mexico, there be a record made and that I would like for him to furnish me with the necessary information.

The Court: Very well.

By Mr. Kuntz:

Q. Before you made this observation on this card, "Deported from Mexico," did you ask any of the Mexican security police or the Mexican authorities to exhibit any document to you regarding the deportation of Sobell from Mexico?

A. I did not.

Q. Did any of those Mexican police or other Mexican officials, whether you asked them or not, did they exhibit to you any document showing that Sobell had been deported?

A. No document, no.

[fol. 1535] Q. By the way, I notice that Sobell's name is on here in pencil.

A. I believe you will notice that it is indelible pencil.

Q. I don't know one pencil from another. I just want to know whether it is in pencil.

The Court: Does that make any difference?
The Witness: It is an indelible pencil, I believe.

Q. Did you give him the pencil to write with?
A. I believe I did, probably.
Q. Well, you had your pen with you then, didn't you?
A. I am not in the habit of handing people my pen to write with.
Q. This man Sobell was in custody; he wasn't walking out of that place, was he? Your pen wouldn't walk with him, would it?
A. Not likely, no.

Mr. Kuntz: All right. Thank you very much.

The Court: Is that all?
Mr. Kuntz: That is all.
The Court: (Addressing witness) You may go back to Texas.
Mr. Saypol: The Government rests, if the Court please.
The Court: The Government rests.
Mr. E. H. Bloch: If the Court please, there are certain [fol. 1536] motions I believe the defense wants to address to the Court. I don't know what the Court's idea is——
The Court: I want them very brief.
Mr. E. H. Bloch: Whether you want them outside the presence of the jury.
The Court: Yes, and very brief. I don't want any extensive argument.
Mr. E. H. Bloch: I can be brief as far as the motions I am going to make are concerned.
The Court: (Addressing jury) You may be excused for a few minutes.

(Jury excused.)

(The following took place in the absence of the jury.)

Motion for Mistrial and Withdrawal of a Juror and Denial Thereof

Mr. E. H. Bloch: If the Court please, the first motion I would like to make is a motion for a mistrial and the withdrawal of a juror upon the ground that there has been intro-

duced in evidence here on the Government's direct case testimony attempting to link up the defendants Rosenberg with membership in the Communist Party of the United States, and that testimony was admitted for the purpose of showing that rationale or causal connection between membership in the Communist Party of the United States and the crime alleged in the indictment so as to make it admissible and establish motive or intent. And it is my conten- [fol. 1537] tion, your Honor, that no such proof of a proper or adequate character has been introduced to establish that nexus or causal or rationale relationship and that this testimony that is now in the record and has been heard by the jury is improper. It has had the effect of confusing the issues; that it is matter of an inflammatory nature and it has resulted in incurable prejudice to the defendants Rosenberg and because of the fact that even if the Court would entertain a motion to strike out that testimony I don't believe that the vice could be cured.

Now that is my first motion.

The Court: Well I will rule on that one. That motion is denied. As I said to the jury this morning when the testimony came in, and I do believe there was other testimony in the record also, aside from the testimony of Miss Bentley, testimony from Elitcher, testimony from Mr. Greenglass, testimony from Greenglass himself, concerning which inferences could have been drawn as to the connection between Communism and the particular offense charged in the indictment.

I thought I made it clear to the jury this morning that the testimony was admitted just as I would admit testimony involving the Republican Party, the Democratic Party, the Masons or the Elks, if there were something about member- [fol. 1538] ship in that party which would prove one of the elements of the offense in this case.

Now what you are doing in effect is arguing as I see it in the reverse; that is, that because a person might be a member of the Communist Party they are entitled to certain immunities which they wouldn't have if they were a member of some other party that didn't quite carry with it the alleged stigma that being a member of the Communist Party does today. And for that reason you say even though there

is some connection or relevancy to the case it should be barred because of that fact and I don't go along with that at all. I don't agree that the connection has not been shown. I will submit it to the jury also for their consideration ultimately to determine whether the connection has been shown. And I deny your motion for a mistrial.

Mr. E. H. Bloch: If the Court please, just this one sentence to make my position clear on this: My whole argument is buttressed upon my belief that there hasn't been sufficient proof to show that causal connection.

The Court: All right.

Mr. E. H. Bloch: Now, my second motion——

The Court: In other words, you say if it had been shown [fol. 1539] it was relevant.

Mr. E. H. Bloch: I don't want to say that in so many words. I am taking the record as it is and my mind is working——

The Court: All right.

Mr. E. H. Bloch: —along a certain line of law.

Motion for Mistrial and Denial Thereof

My second motion, your Honor, without repeating everything that I said here with respect to membership in the Communist Party is with reference to the testimony concerning the Young Communist League, and upon the very same grounds urged in my first motion I now make a motion for a mistrial because of the introduction of that evidence.

The Court: I don't remember that there was any evidence concerning your clients about that. I think it was about Sobell in the Young Communist League.

Mr. E. H. Bloch: I think there was some testimony respecting Ethel Rosenberg. That is my recollection.

The Court: Young Communist League?

Mr. E. H. Bloch: Yes.

The Court: At any rate, whatever instructions I may have made or given at the time still stands and I will deny your motion.

[fol. 1540] Mr. E. H. Bloch: I respectfully except, your Honor.

Motion to Strike and Denial Thereof

My third motion, your Honor, is to strike out from the record all testimony of any witness relating to the subject of the alleged membership of the defendants Rosenberg in the Communist Party of the United States of America.

The Court: I will deny your motion to strike out.

Mr. E. H. Bloch: And the same motion to strike upon the same grounds urged with respect to the Young Communist League.

The Court: Denied.

Mr. E. H. Bloch: Now then, your Honor——

The Court: It is denied, but I don't remember what my original ruling was on the matter of the Young Communist League, but my recollection is that I limited the witness to the Communist Party.

Mr. E. H. Bloch: I think that is what your Honor meant to do, but I think Mr. Saypol represented to you that he would show causal connection, and I think Miss Bentley in response to one of the questions attempted to show that.

The Court: All right. At any rate, that is not of great importance. The important thing is the Communist Party. [fol. 1541] Mr. E. H. Bloch: All right.

Motions to Dismiss Indictment and Denial Thereof

If the Court please, I now move to dismiss the indictment as against the defendants Julius Rosenberg and Ethel Rosenberg upon the ground that the statute upon which the indictment is founded——

The Court: Well, are you repeating——

Mr. E. H. Bloch: I am not going to repeat all the ground. I just want to get the formal verbiage in.

(Continuing) As framed is unconstitutional, as violative of the rights guaranteed to these defendants under the First and the Fifth Amendments; upon all the grounds that I have heretofore urged to the Court in support of my argument when I made a motion to dismiss at the commencement of this trial, and I don't want to repeat all those arguments because the Court has already heard them, but I would like to state for the record that I would like to reallege them as though I am stating them now.

The Court: All right. Motion denied.

Mr. E. H. Bloch: I respectfully except.

And I now move to dismiss the indictment upon the ground that the indictment is defective and invalid because of the defective pleading. You remember——

The Court: You made that.

[fol. 1541a] Mr. E. H. Bloch: It was the constitutional ground which was also made at the commencement of the trial, and I would like to reiterate all the arguments in support of this motion as though I am stating them in full now.

The Court: Motion denied.

Mr. E. H. Bloch: I respectfully except.

The Court: Very well.

[fol. 1542] Mr. Phillips: If your Honor pleases, on behalf of the defendant Sobell, I join in the motions made by Mr. Bloch as though they were made by me, de novo, as it were.

Likewise, on the grounds raised at the opening of the trial, in which I thought I succeeded, but anyhow, I endeavored to point out to your Honor that the statute on which the indictment is based is void, as violative of the First Amendment of the Constitution, of the Fifth and possibly also of the Sixth; that the indictment itself, on the assumption that the statute is not unconstitutional, is so worded as to not come within—as not coming within the requirements of Rule 7 of the Federal Rules of Criminal Procedure. The indictment is so vague, purely generic in the terms in which the indictment is couched; no specific acts of any kind are alleged in the indictment against Sobell, and is so worded as not to safeguard the defendant against double jeopardy, and the testimony in this case, which I will advert to in a moment bears out, illustrates, the very point I made at the beginning of the trial.

The Court: Do you want me to rule on that motion, or have you got some more to say about it.

Mr. Phillips: I have got some more to say.

Therefore, if your Honor pleases, in this case, the only [fol. 1543] instances of any character in which Sobell is mentioned at all is by the witness Elitcher, and assuming for the sake of argument that every word that Elitcher uttered is the truth, we find what? Some time in the early 1940s, and continuing on for a number of years, Sobell,

together with Rosenberg—the word I should use is—importuned Mr. Elitcher, they solicited Mr. Elitcher, almost as though they were looking to win over a recalcitrant mistress to their side, begging of him to assist in furnishing information; that those acts of theirs met with failure. Elitcher at no time joined them, and that is all, that is all that Sobell is charged with having done.

Clearly, this is not the trial that we are in. The offense in this case is not the conversations——

The Court: I don't agree with you.

Mr. Phillips: Just a moment.

The Court: The offense in this case——

Mr. Phillips: I do hope——

The Court: Just a moment, Mr. Phillips.

Mr. Phillips: Yes.

The Court: The offense in this case is that they would, not that they did—this is a conspiracy—that they would get secret information pertaining to national defense and [fol. 1544] transport it or transmit it to the USSR, to its advantage. Now, is it not a link in this chain, is it not a part of this conspiracy that they will try to get recruits to get them secret information?

Mr. Phillips: I am meeting that challenge. It is conceivable, is it not, that Sobell and Rosenberg may be in one conspiracy and Sobell may be in another conspiracy without Rosenberg being present at all, or Rosenberg may be in a conspiracy without Sobell being in it.

The Court: Anything is conceivable. That is not the charge, though.

Mr. Phillips: That is conceivable. Now, I maintain, the proof in this case, assuming every word to be correct and truthful, is just that, that in one conspiracy, which is not the conspiracy we are trying—and I am coming to that, and I am accepting the challenge, and I am not going to prove——

The Court: That is not so. Don't enlarge on it, because I got your point and I think I understand this law of conspiracy, having tried these cases for the Government as a prosecutor, having sat in a number of these trials as a Judge, I think I understand the subject matter of conspiracy pretty well. This is one general conspiracy, but

[fol. 1545] there may be several branches to this tree; this is one trunk and there may be several branches, branching out from this tree, all emanating from this same tree, and the tree is to get this secret information. Some were trying to get the atomic bomb secrets; others were trying to get something else.

Mr. Phillips: One was trying to get the atomic bomb; the other one was trying to get something else. Those are two offenses, but they are through with that. Just a minute. The one that was trying to get the atomic bomb is connected with the atomic bomb, but not the other one. If that is so——

The Court: Just a moment, just a moment. Remember this: You are overlooking a very important thing, and that is that the defendant who was trying to get the atomic bomb secrets was also acquainted with, worked with the defendant Sobell.

Mr. Phillips: If that were the testimony——

The Court: It is the testimony of Elitcher.

Mr. Phillips: Just a moment. If that were the testimony, that he was working with the defendant Sobell to secure information on the atomic bomb——

The Court: No, other information.

Mr. Phillips: I want to make my point.

The Court: Other information.

Mr. Phillips: That is just what I am talking about. If [fol. 1546] he was engaged with the defendant Sobell in securing other information, as to which, we will say, it is an offense, for the sake of the argument, we will say it is an offense, and that is a certain offense, they were two together, cooperating each with the other, having, let's say, all of the elements of a conspiracy to get certain information from Elitcher. That is the testimony. That was abortive. Elitcher paid no attention to them; nothing happened.

The Court: He did pay a lot of attention to them.

Mr. Phillips: When I say "pay attention"——

The Court: But he was very recalcitrant.

Mr. Phillips: But the word "attention"—I should perhaps be more specific in my remark, he listened to them but he did not attend to the siren voices of these tempters—would that be correct?

The Court: Well, he certainly spent a lot of time with them.

Mr. Phillips: He spent an awful lot of time, as many people spend time with a siren voice of a temptress, but don't yield.

The Court: When he was accompanied by your client and went to Rosenberg's home to deliver the informa-[fol. 1547] tion.

Mr. Phillips: Precisely, as to Elitcher's specialty; all of it goes to Elitcher's specialty, which was in Navy projectiles.

Mr. Kuntz: Elitcher didn't testify that he brought anything. He had a can.

Mr. Phillips: Elitcher did not testify that Sobell brought anything in relation to the thing we are trying. Now, that is the point I am trying to get at. I say what was proven here are two conspiracies, one in which Rosenberg and Sobell—at least I am saying what was proven, you understand what I mean by that, it was attempted to be proven, and I claim that is exactly the point of the indictment, that is where the indictment is bad, because in the same indictment it is possible to get a lot of people on the charge of conspiracy, when one conspiracy is meant, and still another conspiracy is meant, and all the conspiracies are tied together, and that is what happened exactly here.

The proof, as formulated by the prosecution—and that is what I meant when I told the jury I was going to sit by, "I don't know what we are here for"——

The Court: So you found out, did you not?

Mr. Philips: Well, I found it out. I anticipated that the [fol. 1548] worst would be Elitcher's testimony, and I anticipated the worst will be that they are trying to show that Rosenberg was such a great friend of Sobell and both of them were trying to get recruits. Well and good, if we tried that case we would have an entirely different trial here, but all of a sudden we find that the real case goes to Gold, to Fuchs, to—what is that fellow's name?—Greenglass, Mrs. Greenglass.

The Court: Don't tell me you forgot his name.

Mr. Phillips: Wait a minute. And Sobell is nowhere

around; Sobell is attending to his duties like every good citizen should.

Now then, I ask you is it not true, therefore, is it not time therefore, that what we are talking about are two distinct conspiracies, on the assumption that all the testimony is true, that in one conspiracy Sobell, Rosenberg and Elitcher are more or less involved? That failed. Then we have another conspiracy which went to Los Alamos, which went to Albuquerque and elsewhere, and that is the big thing.

The Court: What you are saying in effect, Mr. Phillips, is that because the Government established with tremendous strength that branch of this common conspiracy, which dealt with the acquisition of the atomic bomb information, that because that portion of the proof was overwhelming, that therefore the Government hasn't got a right to charge [fol. 1549] and bring to trial in one indictment defendants, where they contend that it is part of one conspiracy, that the defendants will conspire to obtain secret information, secret information—not atomic bomb information only—but secret information, pertaining to national defense; transmit it to Russia or an agent of Russia, intending it to be to the advantage of Russia. You say "No, that can't be done" simply because they may have spent a good portion of their case proving how one branch of this conspiracy was so successful.

Mr. Phillips: The trouble with the statement is that I do not admit the word "overwhelming," as used by the Court; nor do I think the Court has made up its mind that the testimony is overwhelming, nor that other word of a similar character—I don't remember what is was exactly—"strong."

The Court: Well, let's put it this way: if I determine that I believe the witnesses for the Government, I think you will agree with me that it is rather overwhelming.

Mr. Phillips: I still don't believe that. I think they made out a very poor case but that is not the point. That is their business, not mine. My business is simple: the statement or the version of my argument that your Honor just gave is not the version that I am trying to bring across to the [fol. 1550] bench.

The Court: I get your point. You are saying in effect——

Mr. Phillips: Just a minute.

The Court: You are saying in effect that two conspiracies were proven, whereas only one conspiracy is charged.

Mr. Phillips: If anything.

The Court: And therefore——

Mr. Phillips: If you will now say that the over-all, namely, that two people meeting for the purpose of securing information to transfer to the Soviet Union, and then one of them goes somewhere unknown to the other, in Albuquerque, to secure different material, not anything they talked about at all, different material, of an entirely different character, of an entirely different branch of the Government defense or—what is that word?—national defense—that therefore once one man has spoken to the other man and said, "It would be a good thing if we would give information to Russia; Russia needs it; she has been treated shabbily," that once that conversation took place, then each one is responsible for the acts of the other, no matter how far out of that original conversation the thing took place.

The Court: Well, let me answer that. I am not going to [fol. 1551] say that your own characterization of it is correct, because I don't remember every step that you took in framing your question, but supposing—and there is a classic example that has been given—that A and B get together in New Jersey and they say they don't like this courthouse and it should be burned; and B comes over here; they both agree that it should be burned down; and B comes over to New York and he is standing in front of this courthouse and he sees a friend of his, C, and C says, "What are you doing here"? He says, "I don't like this courthouse. I think it should be burned down."

Mr. Phillips: A lot of people agree with him.

The Court: C says, "It is a good idea. We need some kerosene," and he walks down the street, and he walks away from B, and he meets a friend of his, D, and D doesn't know B; and D doesn't know A; he only knows C; and D says, "What are you doing?" He says, "I am trying to get some kerosene." He said, "Come on, I will take you to a store where you can get it; you can get some kerosene. What do you need it for?" He said, "I need it because I

want to burn down a federal courthouse." Now, getting kerosene by itself is a perfectly lawful act, but getting kerosene for the purpose of burning down a court house is an [fol. 1552] unlawful act.

Mr. Phillips: O.K.

The Court: Now, you can see in this case that every one of them are in a conspiracy, because they all have knowledge of the ultimate unlawful objective. Many of them don't know each other.

Mr. Phillips: Well, your analogy or your discussion at this moment might be analogous to this case: A and B together want to burn this court house. Then they meet C. C says, "That is a good idea." C then gets inflammable material and burns the Supreme Court building next door; is there a conspiracy between A, B and C to burn the Supreme Court building?

The Court: But unfortunately, the trouble with your example is that the conspiracy was not to send confidential information to England or to France, but it was to Russia.

Mr. Phillips: It doesn't make a bit of difference.

The Court: Oh, I don't agree with you.

Mr. Phillips: Under the statu-e, you must agree.

The Court: You just left out a very important element. They have agreed to get this very important information and send it to Russia.

[fol. 1553] Mr. Phillips: Just a moment. You must agree that it makes not a bit of difference under the statu-e and under the indictment, if it was Russia or Montenegro.

The Court: We are talking about this conspiracy, this one; we are talking of whether it is important to this one, and to this one it is important, to this one it is.

Otherwise you may have several conspiracies, but in this one it is important because they charge that it is information for the USSR.

[fol. 1554] Mr. Phillips: Information for the USSR.

The Court: Right.

Mr. Phillips: But the information on which they both join to go to the USSR, that information was abortive, it was over with.

The Court: Well, I am sure——

Mr. Phillips: Well, as long as you understand the point

I am making, I do not want you to decide without quite grasping the think I am saying, and I am saying it, as you know, without any preparations in advance because that has been gleaned from the nature of the trial and the testimony as it came along.

The Court: I take it no preparation except three weeks of it.

Mr. Phillips: I beg pardon?

The Court:: I say, no preparation except the three weeks that you have been sitting here and thinking about it.

Mr. Phillips: But it is only as a result of this trial. I did not know exactly what would be coming.

The Court: All right, Mr. Phillips.

Mr. Phillips: And I say that it is a spontaneous statement that I made to your Honor.

The Court: I appreciate your argument and I don't agree with you and I deny your motion.

[fol. 1555] Mr. Phillips: I respectfully except, if your Honor please.

Mr. E. H. Bloch: If the Court please——

Mr. Phillips: Just a moment.

(Mr. Phillips confers with associates.)

Mr. Phillips: I was going to wait until Rosenberg's attorney had made any further motions but Mr. Kuntz draws my attention to the fact that we have some other motions and he thinks I might as well do it now.

The Court: Go ahead. Make them brief, please.

Mr. Phillips: I will ask your Honor please to strike out all testimony on the subject of Communist affiliations or activities from this case.

The Court: Well, may I consider then, Mr. Kuntz, the same motion that was made——

Mr. Kuntz: Yes, Judge.

The Court: —with respect to Rosenberg's on this subject, applies to Sobell, and I deny your application.

Mr. Phillips: I do not think he quite made it that way.

Mr. Kuntz: I had that on my list but he could have skipped it because the record took care of it.

The Court: All right.

Mr. Phillips: Yes. Now if your Honor please, on behalf

[fol. 1556] of Mr. Sobell I ask your Honor to strike out all the testimony of David Greenglass and his wife, Mrs. Ruth Greenglass, of Harry Gold, of Dorothy Abel, of Louis Abel, of Dr. Koski, of Col. John Lansdale, Jr., of Lan Adomian, of the State Department record as to Yakovlev, and all exhibits relating to the atomic bomb or atomic energy weapon, and also the exhibit relating to the reproduction of the Jello box, and all exhibits and the testimony from Mexico, on the ground that no basis for this evidence has been laid—the record as well of Hilton Hotel, Albuquerque, New Mexico, and the record of the bank account of Mrs. Greenglass, and also the testimony of Dr. George Bernharft.

The Court: That is denied.

Mr. Kuntz: On the ground that they are not binding on the defendant Sobell.

Mr. Phillips: On the ground that they are not binding on the defendant Sobell.

The Court. I will give, at the proper time, the jury the instruction on the matter of law as to what is binding on each other.

Mr. Phillips: In denying this motion your Honor is denying it as to each one of them?

The Court: That is correct.

Mr. Phillips: Because I made a motion and it is possible [fol. 1557] that you may deny as to some and grant as to others.

The Court: As to each one.

Mr. Phillips: I respectfully except. At this time may I ask your Honor to call for the exhibits, the three indictments in this case, and the affidavit of Government agent, Rex I. Shroeder, verified August 2, 1950. If I am wrong on the date of the verification, I will ask your Honor to disregard it. I may be mistaken as to the date, so that they can be referred to hereafter in the course of the trial. They were marked for identification, I believe, with the exception of the affidavit of Shroeder—that wasn't marked at all, neither for identification nor in evidence. And if your Honor will have those documents available as the Court's exhibits, so as not to bind either of the defendants or the Government on it, I think it would be appreciated.

The Court: I do not understand it; what indictment?

Mr. Kuntz: There are three indictments, the original indictment, the superseding indictment——

Mr. Saypol: They are asking your Honor to act as process server.

The Court: That is something you are entitled to get from the clerk.

[fol. 1558] Mr. Kuntz: If your Honor please, I am sure Mr. Saypol knows we are not asking your Honor to act as a process server, to act as anything but what you are.

The Court: All right, I don't take offense. The two indictments you can get; just ask the clerk for them, the two previous indictments.

Now what is the other one? What is this about Shroeder or Shrader?

Mr. Phillips: Oh, I must explain to your Honor. This man was taken into custody——

The Court: Which man—Shroeder?

Mr. Phillips: My client—on the affidavit of Shroeder, not on an indictment——

The Court: Oh, you want the complaint that was filed.

Mr. Phillips: Oh, you call it the complaint; I call that the affidavit.

The Court: Down in the Commissioner's office.

Mr. Phillips: That is what I have reference to.

Mr. Saypol: It is a filed document.

Mr. Phillips: All right, if we can have those as well as the filed document, then my request is superfluous. I am not very often in this court.

The Court: Mr. Phillips——

Mr. Phillips: Yes.

[fol. 1559] The Court: You send your assistant, Mr. Kuntz, to the Clerk's office and he will get a copy of the indictments, a copy of the complaint as it is filed, or if he talks to Mr.——

(Clerk confers with the Court off the record.)

The Court: I know that. The complaint is down in the Commissioner's office and that is where you will get it.

Mr. Phillips: I made up my mind, if your Honor please, the next twenty-five years I am going to spend in this courthouse.

The Court: That would be a good idea. It is a good courthouse.

Mr. A. Bloch: Now, if your Honor please, to complete the record and to serve the rights of the defendants, I move to dismiss the indictment on the ground that the Government has failed to prove the charge contained in the indictment beyond a reasonable doubt.

The Court: Denied.

Mr. Phillips: By the way, we failed to make that statement in that way. I think it is a proper motion to make.

The Court: "Well, that refers to you too. Denied. Now all the motions are made. We will take our mid-afternoon recess at this point.

[fol. 1559-a] (Short recess.)

Mr. E. H. Bloch: If the Court please, my first witness is the defendant Julius Rosenberg.

The Court: Very well.

[fol. 1560] Julius Rosenberg, one of the defendants, called as a witness in behalf of defendants, being first duly sworn, testified as follows:

Direct examination.

Mr. E. H. Bloch:

Q. Now, Mr. Rosenberg, please keep your voice up. Don't make the same mistake some of the witnesses made and lower it as you go along.

What is your full name?

A. Julius Rosenberg.

Q. And how old are you?

A. 33.

Q. Where were you born?

A. I was born in New York City.

Q. And were you educated here in New York City?

A. Yes, I was.

Q. Will you tell the Court and jury the schools that you attended.

A. I attended Public School 88 on the Lower East Side

in Manhattan, and then I attended Public School 96, a junior high school. At the same time that I attended public school I attended Hebrew School, the Downtown Talmud Torah, Manhattan. I then attended Seward Park High School in Manhattan until 1934. While I attended Seward Park High School I attended Hebrew High School on East Broadway, New York.

I entered the School of Technology of the College of the City of New York in June, 1934, and I attained my degree [fol. 1561] of a Bachelor of Electrical Engineering in February of 1939.

Q. Now, are you single or are you married?

A. I am married.

Q. To whom are you married?

A. I am married to Ethel Rosenberg.

Q. Now, is she the lady who was sitting next to you at the counsel table and is sitting right now here?

A. Yes, sir.

Q. When did you marry Ethel Rosenberg?

A. June 18, 1939.

Q. And as a result of that marriage did you have any children?

A. Yes.

Q. What are the names of those children?

A. The oldest boy's name is Michael Allen Rosenberg.

Q. How old is he?

A. He is eight years old. And the youngest, his name is Robert Harry Rosenberg.

Q. And how old is he?

A. Four years old.

Q. Now, do you remember the date of your arrest?

A. Yes, I do.

Q. When were you arrested and taken into custody by the United States authorities?

A. I was arrested on July 16th.

Q. What year?

A. 1950.

Q. Now, up to the time of your arrest did you reside with [fol. 1562] your wife and two children at a residence here in New York City?

A. Yes, I did.

Q. Where did you live?

A. I lived at 10 Monroe Street, called Knickerbocker Village.

Q. Is 10 Monroe Street one of the various buildings in a development known as Knickerbocker Village?

A. That is correct, it is.

Q. Now when did you move into Knickerbocker Village at 10 Monroe Street?

A. In the Spring of 1942, we rented an apartment in Knickerbocker Village.

Q. When you say "we," you mean you and your wife?

A. Yes, sir.

Q. How much rental did you pay for that apartment at the time you moved in?

A. $45.75 per month.

Q. And how many rooms were there in that apartment?

A. Three rooms and a bathroom.

Q. Was there a living room?

A. Yes, sir.

Q. And was there a bedroom?

A. Yes, sir.

Q. And was there a kitchen?

A. Yes, sir.

Q. And a bathroom?

A. That is correct.

Q. Now, was your rent any different from the rental that you originally paid in 1942 during the course of your occupancy of that apartment?

A. Yes.

Q. Up to 1950?

A. Yes, sir.

Q. And was it raised?

A. It was.

[fol. 1563] Q. And what was the rental when it was raised?

A. $47.

Q. And was it raised again?

A. Yes.

Q. And what was the rental after it was raised the second time?

A. $51.

Q. And was that the rental you were paying for that apartment for yourself and your family at the time of your arrest in August of 1950?

A. That is correct.

Q. Now, Mr. Rosenberg, when you moved into that apartment in 1942, did you purchase any furniture for that apartment?

A. No, sir, I did not.

Q. Was the apartment furnished at the time you moved into it?

A. No, it was not.

Q. Did you procure furniture from somebody?

A. Yes, I did.

Q. From whom did you procure furniture and tell us the circumstances, please?

A. I had met a friend of mine at the union, the Federation of Architects and Engineers, and he was breaking up his home to go to California for a job and he was contemplating placing his furniture in storage, and I told him that I had just been granted a lease to Knickerbocker Village, and he said perhaps it would be best—"I would let you use my furniture and I would save the storage money and you would have the use of the furniture."

[fol. 1564] Q. And did you take his furniture and put it into your apartment at 10 Monroe Street?

A. That I did.

Q. And was that furniture second-hand furniture?

A. Yes, it was.

Q. Now, from time to time during the course of your living with your family at that apartment, did you have occasion to purchase new furniture?

A. Only once did I purchase a new item.

Q. What item was that?

A. A console table.

Q. And when did you purchase that?

A. I would say it was either in 1944 or 1945.

Q. And from where did you purchase that console table?

A. From R. H. Macy & Company.

Q. And how much did you pay for that console table?

A. It was somewhere about $21.

Q. Didn't you also purchase a breakfront?

A. No, I didn't purchase a breakfront; the breakfront you are referring to I was given by a person I met at Jefferson Travis Radio. The circumstances were that this man who was vice-president of that company had designed this breakfront and it wasn't made according to his specifications and could not fit into his home, and he asked me if I would please take the breakfront off his hands for the cost of transportation.

Q. And how much was that cost of transportation?

[fol. 1565] A. $5.

Q. Now, outside of those two items, the console table and the breakfront, did you purchase any other furniture for your home during this eight-year period from 1942 to 1950?

A. I purchased a few second-hand items from some resident of Knickerbocker Village. I would like to explain, please: There was a newspaper called the Knickerbocker Village News. The tenants would advertise certain items they wanted to get rid of, and at one time or another we purchased a second-hand piano.

Q. How much did you pay for that second-hand piano?

A. $25.

Q. What other items?

A. A chest of drawers.

Q. How much did you pay for that?

A. $20.

Q. What else?

A. Two small chests for the childrens' room.

Q. And how much did you pay for those?

A. $5. apiece.

Q. Now, have you now told us practically all the furniture that you purchased for your home during the years 1942 to 1950?

A. To the best of my recollection I have.

Q. Now, Mr. Rosenberg, when you were graduated from the College of the City of New York with your engineering degree, did you obtain employment anyplace?

A. I had odd jobs during the year 1939.

Q. Can you remember any or all of the employers for [fol. 1566] whom you worked during that period?

A. I worked for a man by the name of Paul Williams during that period.

Q. And what did you do for him?

A. I did some research for him on an invention that he was trying to perfect.

Q. And can you recollect any of the names of any of the other employers for whom you worked during that period?

A. I worked for E. B. Bliss & Company, in Brooklyn.

Q. In what capacity?

A. As a tool designer.

Q. Can you remember any of the other employers?

Mr. Saypol: Would Mr. Bloch be good enough to fix the times?

Mr. E. H. Bloch: I think he said 1939.

The Court: All right.

Mr. E. H. Bloch: Isn't that correct, your Honor, that we are up to 1939?

The Witness: That is right. I can't recollect.

Q. Now, after you had completed these odd jobs or the employment in these odd jobs, did you get a position on a permanent basis?

A. Before that my wife secured a position in Washington, D. C., and I had been on a series of Government lists for a job.

By The Court:

Q. When did she get her job in Washington?

[fol. 1567] A. In 1940.

Q. What branch?

A. The Census Bureau.

By Mr. E. H. Bloch:

Q. That is your wife now?

A. Right. And I went down to Washington with my wife in the summer of 1940 to see if I could secure any position off these Government lists.

Q. Let me understand you; prior to the time that you went down to Washington had you made application to the Federal Government for a number of jobs?

A. Yes. I took exams.

Q. After you went down to Washington were you successful in obtaining a position from the United States Government?

A. Yes, I was.

Q. What position did you obtain?

A. I was appointed from the junior engineer list to a job as junior engineer with the Signal Corps in New York.

Q. How long in all did you live in Washington from the time you first got down there sometime in the summer of 1940 to the time you came back here in New York to start performance of your duties under the job that you got from the government?

A. About two months.

Q. Did your wife remain in Washington after you left?

A. Yes, she did.

Q. Did she follow you after you got back to New York?

[fol. 1568] A. A couple of months after she left Washington and came to live with me in New York.

Q. Now, when your wife came back to New York did you take an apartment with her together?

A. No, we did not.

Q. Where did you live?

A. We lived at my mother's house on Goerck Street, New York City.

Q. How long did you live there?

A. About six months.

Q. And after that did you move someplace else with your wife in New York City?

A. Yes, we did.

Q. Where did you move?

A. We moved to a furnished room on Avenue A, near 7th Street.

Q. And how long did you live there with your wife?

A. A little over a year.

The Court: What year was that?

The Witness: That was in the year 1941.

Q. And where did you live from 1941 until you moved into Knickerbocker Village in 1942?

Q. At that apartment I am just talking about.

A. Now, when did you commence working for the United States Government in New York City? I think you said for the Signal Corps?

A. That is correct.

Q. When?

The Court: The Signal Corps of the Army?

[fol. 1569] Q. The Signal Corps of the Army, is that correct?

A. That is correct. I don't remember the exact date, but it was in 1940 the end of the summer.

Q. And how long did you continue working for the United States Government?

A. Up until February, 1945.

Q. Now, were you then separated from your job with the United States Government?

A. I was.

Q. Did you then procure another position?

A. Yes, I did.

Q. Now, I will go back just one second, if I may; During your service with the United States Government from 1940 to 1945, did you always have the same position?

A. No, I did not.

Q. Well, will you describe to us how many positions you had while you were working for the United States Government?

A. I started my employment as a junior engineer in the late summer of 1940 at $2000. per annum. In about one and a half years I was promoted to assistant engineer at $2600. per annum. A year and a half after that I secured a promotion to associate engineer at $3200. per annum, and I received certain ingrade raises, so that my salary at the time of my severance from the Government was approximately $3600. per annum.

[fol. 1570] Q. Now then, we come to the time that you say you procured another position. With whom did you secure this next position?

A. I secured a position with the Emerson Radio Company of New York.

The Court: That is February 1945?

The Witness: Late February '45.

Q. Now, had you been working at the plant of the Emerson Radio Company here in New York while you were still working for the United States Government?

A. Yes. That was one of the firms I was stationed at.

Q. And how long did you continue working for the Emerson Radio Corporation?

A. Up until the end of 1945, December.

Q. And what were your earnings during the period that you worked for the Emerson Company in 1945?

A. My starting salary was $70. per week. I received an increase to $77. a week, including the overtime work which was usual—I averaged approximately $100. per week.

Q. Now did there come a time when there was a curtailment of the staff at Emerson and you were laid off?

A. That is right.

Q. And did that occur in December 1945?

A. That's right, sir.

Q. Now, after you no longer were employed with the [fol. 1571] Emerson Radio Corporation were you employed by anybody else subsequently?

A. No, sir.

Q. What did you do for a livelihood?

A. Before my termination of employment with Emerson Radio, when there were signs that the staff would be curtailed, I got together with my brother-in-law, Bernard Greenglass, and a neighbor at Knickerbocker Village by the name of Isidore Goldstein, and we formed a partnership.

Q. And what was the trade name or firm name under which that partnership conducted business?

A. The United Purchasers & Distributors.

Q. And did you have an office when you started—did you have an office with the United when you started business with these two partners?

A. We used a store of my father-in-law's shop at 64 Sheriff Street as our office.

Q. Now, how long did you continue——

The Court: And did the witness state what his business was?

Mr. E. H. Bloch: Oh, surely—I am sorry, your Honor.

Q. What was the business of this United—what was the full name, please?

A. United Purchasers & Distributors.

Q. What was the business in which they engaged?

[fol. 1572] A. Buying and selling surplus products.

Q. When you say "surplus," were there any special kind of products?

A. Mostly in the hardware line.

Q. In the what?

A. In the hardware line.

Q. And did you buy and sell any small machinery?

A. No, sir.

Q. Can you give us two or three of the types of it*mes*?

A. Screws, nuts, bolts, wrenches, screwdrivers.

Q. Now, did there come a time when you went into another business?

A. In 1946, the spring of 1946 we dissolved the United Purchasers & Distributors, and the partners entered into a new partnership.

Q. And who were the members of the firm from that point on?

A. Bernard Greenglass, David Greenglass, Isidore Goldstein and myself.

Q. And what was the firm name of that partnership?

A. The G. & R. Engineering Company.

Q. And where was the office of the G. & R. Engineering Company?

A. We rented a store on 2nd Street, 200 East 2nd Street.

Q. And what was the business of the G. & R. Engineering Company?

A. It was a machine shop.

Q. And when you commenced business with these three other partners, two of whom were brothers-in-law of yours, [fol. 1573] did you invest any money in that business?

A. Yes, the money that I had invested in United Purchasers & Distributors I reinvested in the G. & R. Engineering Company.

Q. How much money had you invested in the United Purchasers & Distributors business?

A. $1000.

Q. Now, did your brother-in-law, Dave Greenglass, invest any money in the G. & R. Engineering Company?

A. Yes, he did.

Q. How much did he invest?

A. He invested $1000.

Q. And did your brother-in-law Bernard Greenglass invest any money in that?

A. Yes, he did.

Q. How much did he invest?

A. $1500.

Q. And was that likewise true in terms of the amount of the investment as applied to the fourth man, who was not a member of your immediate family, $1500?

A. That is correct.

The Court: You mean $1500?

The Witness: Pardon me, I would like to add one thing, that I invested $1500. in the G. & R. Engineering Company also.

Q. I see. Now, did there come a time when the G. & R. Engineering Company moved its offices?

A. Yes, they did.

Q. And to where did they remove their offices?

[fol. 1574] A. They moved——

Q. And when?

A. They moved to 370 East Houston Street in the fall of 1947.

Q. Now, in the fall of 1947 did there come a time when the G. & R. Engineering Company was dissolved?

A. Yes, there did come a time.

Q. And did there come a time when you, together with your brothers-in-law, Dave Greenglass and Bernie Greenglass, formed a corporation known as Pitt Machine Products Co. Inc.?

A. That is correct.

Q. Now, was there somebody else——

The Court: When?

Mr. E. H. Bloch: I am sorry.

Q. When was the Pitt Machine Products Co., Inc. formed?

A. I don't know the exact date, but it was in the fall of 1947.

Q. Now, was there anybody else besides the three of you, the members of this family unit, who had anything to do with the Pitt Machine Products Co.?

A. Yes, David Schein.

Q. Was David Schein related to you?

A. No, he was not.

Q. Do you know what David Schein's business was at that time?

A. Yes. He had a number of businesses.

Q. Is he——

[fol. 1575] The Court: Was Goldstein in the Pitt also?

Mr. E. H. Bloch: No, Goldstein dropped out of it.

Q. Did Isidore Goldstein drop out of the picture at this point?

A. Yes.

Q. And a new man by the name of David Schein came in, is that right?

A. That is correct.

Q. Did David Schein invest any money in Pitt Machine Products Co., Inc?

A. He invested $15,000.

Q. And what did he get for his $15,000?

Q. He obtained 25 shares of common stock and preferred stock to the amount of $15,000.

Q. Now, did you obtain any shares of the common stock of Pitt Machine Products?

A. I obtained 25 shares of the company.

Q. Did Dave Greenglass obtain any shares of the common stock of that company?

A. Yes, he did.

Q. How much did he obtain?

A. 25 shares.

Q. And was that likewise true of your brother-in-law Bernard?

A. That is correct.

Q. Now, when you commenced operations in that business, was David Schein at all directly involved in the day-by-day operations of the business?

A. He was not.

Q. Now, Mr. Rosenberg——

[fol. 1576] The Court: Excuse me, I don't believe we have the investment of the respective members in the Pitt Machine Company outside of Schein.

Mr. E. H. Bloch: I think you are right, your Honor.

Q. How much did you invest in the Pitt Machine Products Co., Inc.?

A. All my interest in the G. & R. Engineering Company.

Q. And how much was that valued at?

A. A valuation of the entire G. & R. Engineering Company of $15,000. was put up by the accountant.

Q. See if I understand you: That G. & R. Engineering Company, at the time Goldstein dropped out, was really owned by you and your two brothers-in-law, is that right?

A. That is correct.

Q. And you say the combined shares of the three of you—I am talking about this little family unit of yours—totalled $15,000, according to the accountant's valuation?

A. That is correct.

Q. And then Schein, Dave Schein, stuck in $15,000.?

A. I would like to add something else on the investment. At one point in the existence of G. & R. Engineering Company Bernard Greenglass put in $5000. of moneys he had borrowed from the family.

Q. When did he do that?

A. At the time we were buying machines from the [fol. 1577] War Assets Administration.

Q. In other words, after you commenced operations of the Pitt Products Co., Inc., did you purchase from the War Assets Company or Government corporation, machinery prior to the time you started operations as Pitt Machine or subsequent to that?

A. Prior.

Q. And is that what you mean when you said that Dave Greenglass invested $5000.?

A. Bernard.

Q. Bernard?

A. That's right.

Q. Bernard did. How about Dave?

A. None of us invested any additional amounts.

Q. All right. Now, Mr. Rosenberg, are you aware of the charge that the Government has leveled against you?

A. I am.

Q. Do you know what you are being charged with?

A. Yes.

Q. What are you being charged with?

A. Conspiracy to commit espionage to aid a foreign government.

Q. And you have been here all the time that the witnesses who appeared for the prosecution testified?

A. Yes, sir, I have.

Q. And amongst those witnesses did you hear your brother-in-law Dave Greenglass testify?

A. Yes, I did.

Q. And did you hear your sister-in-law Ruth Green-
[fol. 1578] glass testify?

A. I did.

Q. Now I want to direct the following questions and try to have you focus your attention upon your recollection of their testimony.

Mrs. Ruth Greenglass testified here, in substance, that in the middle of November 1944 you came over to her house or you invited her to your house and you asked her to enlist her husband, Dave Greenglass, in getting information out of where he was working and deliver or convey that information to you.

Did you ever have any conversation with Mrs. Ruth Greenglass at or about that time with respect to getting information from Dave Greenglass out of the place that he was working?

A. I did not.

Q. Did you know in the middle of November 1944 where Dave Greenglass was stationed?

A. I did not.

Q. Did you know in the middle of November 1944 that there was such a project known as the Los Alamos Project?

A. I did not.

Q. Located in New Mexico?

A. I did not.

[fol. 1579] Q. Ruth Greenglass has testified further here that——

The Court: Don't you think it would be better, instead of characterizing what she testified to, you ask him certain facts?

Mr. E. H. Bloch: Would you prefer it that way?

The Court: Yes, I would. I think it would be better.

Mr. E. H. Bloch: You see, your Honor, it is so difficult to direct his attention to——

The Court: You try. Just go ahead.

Mr. E. H. Bloch: I will try my best.

Q. Did you ever give Ruth Greenglass $150. or advance to Ruth Greenglass $150., or any sum whatsoever for her to go out to visit her husband in New Mexico, for the purpose of trying to enlist him in espionage work?

A. I did not.

Q. Did you ever give Ruth Greenglass one single penny at any time during your life?

A. I did not.

Q. Now, Ruth Greenglass testified in substance, that she went out to visit her husband, and then she came back here and when she came back here she conveyed certain information which she had received from her husband, and I refer specifically to the names of certain scientists like Dr. Neils Bohr, Dr. Oppenheimer, Dr. Urey. Did you ever have a [fol. 1580] conversation with Ruth Greenglass in the month of December 1944, in which any of those names were mentioned?

A. I did not have such a conversation.

Q. Did Ruth Greenglass at any time mention to you the names of Dr. Neils Bohr, or Dr. Oppenheimer or Dr. Urey, or the name of any other scientist who was ever at the Los Alamos project in New Mexico?

A. She did not.

Q. Did Ruth Greenglass in the middle or in or about December 1944, or at any time, ever disclose to you the names of any of the personnel of the Los Alamos Project, or a description of the layout of that project?

A. She did not.

By The Court:

Q. Well, did she see you at or about that time?

A. December——

Q. 1944?

Mr. E. H. Bloch: December of 1944.

A. Yes, I did see Ruth Greenglass at or about that time.

By Mr. E. H. Bloch:

Q. And to the best of your recollection where did you see her?

A. Well, there would always be a social family gathering on Friday night at my mother-in-law's house.

[fol. 1581] Q. Is that Ethel's mother?

A. That is correct.

Q. What is her name?

A. Mrs. Greenglass.

Q. I mean her first name?

A. Tessie Greenglass.

Q. Where does she live?

A. 64 Sheriff Street.

Q. Did she live at 64 Sheriff Street in 1944?

A. Yes, she did.

Q. And has she always lived at 64 Sheriff Street right along?

A. That is correct.

Q. Did you meet Ruth Greenglass there from time to time on Friday nights?

A. That is correct.

Q. And when the Court asked whether you ever met her there, was there anything said at your mother-in-law's house about espionage, or about getting information out of Los Alamos, or anything pertaining to the testimony of Ruth Greenglass on these lines?

A. There was not.

By The Court:

Q. Well, did you know that she had been out to see David?

A. In November 1944?

Q. Yes, when she came back, did you know that she had been out there?

A. When she came back, we knew that she had visited him at his camp.

Q. Did you know where it was?

A. No. She told us—I am talking about the family—that she visited Albuquerque.

By Mr. E. H. Bloch:

[fol. 1582] Q. New Mexico?

A. That is right.

Q. Did you associate Albuquerque, New Mexico, with the Los Alamos Project?

A. No, I did not.

Q. Did you know of the existence of the Los Alamos Project in December 1944?

A. I did not.

Q. Did you associate Albuquerque, New Mexico, with any secret project of the United States?

A. I did not.

Q. Now then, there has been testimony here about the first furlough that Dave Greenglass had, where he came back to New York—well, starting with January 1, 1944, and extending for a period of about fifteen days while he was here; and Dave Greenglass and Ruth Greenglass testified that about two days after Dave came into New York you came over to their house one morning and you asked Dave for certain information about the Los Alamos Project, the work he was doing, the names of scientists, or whatever it is; did you ever go over to the Greenglass's house and ask them for any such information?

A. I did not.

Q. Or was any such information conveyed to you at that time?

A. It was not.

Q. There has been further testimony from the lips of Dave Greenglass and Ruth Greenglass that you asked Dave Greenglass, after he conveyed certain oral information, to [fol. 1583] write it down, and that the following morning you came back and he delivered to you a copy of a sketch, together with certain written material; did you go to the Greenglass's home and obtain a written sketch and *and* any description of that written sketch, or any other written matter from Dave Greenglass, concerning Los Alamos or any of the things that were taking place at the Los Alamos Project?

A. I did not.

By The Court:

Q. Did you see David Greenglass when he came to New York in January 1945 on a furlough?

A. Yes, I did.

Q. Did you see him at your home or at his home?

A. I saw him first at my mother-in-law's house.

Q. And then?

A. And then, while we had dinner there, the members of the family invited Dave and Ruth Greenglass over their house for supper, and we made a family invitation to Dave and Ruth to come to our house for supper.

Mr. E. H. Bloch: I am going to get to that, your Honor.
The Court: Just a moment.
Mr. E. H. Bloch: Yes.

Q. When you met him on that first occasion, did he tell you where he was stationed?

A. When he was at my mother-in-law's house he told everybody present that he was working on a secret project [1583a] near Albuquerque.

Q. I show you Government's Exhibit 2 and ask you whether or not Dave Greenglass ever delivered to you a sketch substantially similar to the sketch that you hold in your hand, in January 1945 (handing)?

A. He did not deliver such a sketch.

[fol. 1584] Q. Or at any other time?

A. I never saw this sketch before.

Q. Have you ever seen a sketch like that in your life?

A. I have never seen a sketch like this before.

Q. Now then, I believe, in response to the Court's questions just now, you were asked when you first saw Dave Greenglass when he came back on his first furlough in January 1945, and I believe you said, at your mother-in-law's house.

A. That is correct.

Q. Is that the time he said to you, as well as to other members of the family present, that he was working on a secret project?

A. That is correct.

Q. Did you know at that time that he was working at Los Alamos Project?

A. No, I did not know.

Q. Did you associate in your own mind the words "Secret Project" or the information from Dave Greenglass that he was working on a secret project, with the Los Alamos Project?

A. I did not.

Q. Did you associate where Dave Greenglass was working in New Mexico with any project developing the atom bomb?

Mr. Saypol: Just a moment.

A. I did not.

Mr. Saypol: Just a moment, please. Your Honor may have observed that I have been completely reserved [fol. 1585] in respect to making objections as to matters of form or even matters of incompetent evidence, but I think we have gotten to the point where we ought to get away from conclusions and operations of the mind and characterizations of testimony, as elicited on the part of counsel.

The Court: No, no, that is the only way he can answer the charges. We have got to find out what was in his mind.

Mr. Saypol: True.

The Court: But I would prefer if you don't characterize the other testimony, Mr. Bloch.

Mr. E. H. Bloch: All right, I am going to try not to do that. You see, I remember it, but I am not so sure that he has a legal mind and can remember it the way I can.

The Court: If you have difficulty, then——

Mr. E. H. Bloch: All right.

By Mr. E. H. Bloch:

Q. Did you, at any time during Dave Greenglass' furlough in New York in January 1945, describe to him an atom bomb?

A. I did not.

Q. Could you describe an atom bomb today or how an atom bomb works, or the component parts of an atom bomb and the functions of each part and the interrelations [fol. 1586] of each part?

A. Well, I heard in court a description of the atom bomb and outside of that I have never heard a description like that before, and I would say that I cannot repeat that description.

Q. Now, tell me, Mr. Rosenberg, you received an engineering degree, did you not?

A. That is correct.

Q. Did you, in the course of your studies looking toward getting that degree, ever take courses in nuclear physics?

A. I did not.

Q. Or any advanced physics?

A. I did not.

By The Court:

Q. At any time prior to January 1945, had anybody discussed with you, anybody at all, discussed with you the atom bomb?

A. No, sir; they did not.

Q. Did anybody discuss with you nuclear fission?

A. No, sir.

Q. Did anybody discuss with you any projects that had been going on in Germany?

A. No, sir.

Q. On the atom bomb?

A. No, sir.

Q. No?

A. No, sir.

By Mr. E. H. Bloch:

Q. What was your field as an engineer?

A. My field as an electrical engineer was the production of electronic communications equipment, radio receivers [fol. 1587] and transmitters and radio telephones.

Q. And was that the type of work that you did for the Government of the United States while you were employed by them from 1940 to 1945?

A. Yes, that was the type of work.

Q. And was that type of work that you did while you were employed at Emerson Radio during the year 1945?

A. No, I did some research work for Emerson Radio.

Q. What kind of research work did you do with Emerson?

A. Some development work on some new projects they were making for the Navy and Army.

Q. Did that research work involve work in a field of nuclear physics?

A. No, it did not.

Q. Now, following the Court's question about whether or not you saw Dave and Ruth Greenglass on furlough——

The Court: Do you think this is a good time to take a recess?

Mr. E. H. Bloch: If the Court please, I would welcome it.

The Court: All right, we will recess until 10:30 tomorrow morning.

(Jury excused.)

[fol. 1588] Mr. Phillips: May I come to the bench for a moment?

Mr. A. Bloch: May I step up to the bench?

(The following took place at the bench.)

Mr. Phillips: If your Honor please, I don't know if I made clear the motion that I should have made, namely, for the release of the defendant on the ground that the testimony up to the time to the close of the people's case——

The Court: Well, you move for a dismissal of the indictment. That would bring with it the release of the defendant.

Mr. Phillips: Well, on the additional ground that the testimony does not warrant submitting to the jury——

The Court: In other words, Government hasn't made out a prima facie case.

Mr. Phillips: Government hasn't made out a strong enough case.

The Court: A prima facie case.

Mr. Phillips: Prima facie case to warrant beyond a reasonable doubt the conviction of this defendant.

Mr. Kuntz: Off the record.

(Further discussion off the record.)

[fol. 1589] Mr. Phillips: Now, one other thing: In Government's Exhibit 25 and——

The Court: 25 and 25-A.

Mr. Phillips: I move to strike out from the consideration of the jury—I think it is very close to the side on which the name of Sobell is not written—the words "Deported from Mexico."

The Court: No.

Mr. Phillips: Just a moment. The reason is, it is very

clear from the witness' own testimony that that was h
mental reaction, his conclusion, and not based on any fact

The Court: No, that is denied.

I suggest that you read the statute under which it
admitted. Read Section 1732. You will see all of th
affects weight; doesn't go to admissibility.

Mr. Phillips: The motion is made.

The Court: Title 28, 1732.

(Further discussion off the record.)

(Adjourned to March 22, 1951, at 10:30 a.m.)

[fol. 1590] New York, March 22, 195

10:30 o'clock a.m.

Trial resumed.

JULIUS ROSENBERG, resumed the stand.

Direct examination (Continued).

By Mr. E. H. Bloch:

Q. Now Mr. Rosenberg, will you keep your voice up th
way you did yesterday? Now I would like to go back an
cover just one or two items in terms of chronologic
sequence with regard to your life. You testified yesterda
with respect to various places that you resided from th
time of your marriage until you moved into Knickerbocke
Village in 1942, do you remember that?

A. That is correct.

Q. Now I am going to ask you whether or not you eve
lived in Williamsburg, Brooklyn, during any period fro
1939 to 1942?

A. Yes, sir, I did.

Q. Now, how long did you live there?

A. For just about one year from the date of my marriag
until we went to Washington, D. C.

Q. You didn't tell us about that yesterday?

A. It slipped my mind, sir.

[fol. 1591] Q. With whom did you live in Williamsburg?

A. I lived with a friend who was a classmate.

Q. What is his name?

A. Marcus Pogarsky.

Q. Was Pogarsky ever known as Page?

A. Yes. Later on he changed his name to Page.

Q. What was his wife's name?

A. Stella.

Q. Did you and your wife live with the Pages in that apartment in Williamsburg?

A. Yes, sir. We had a bedroom there.

Q. To come to the middle of November 1944, with respect to the alleged talk that you had with Ruthie Greenglass, your sister in law, before she went out to visit her husband at Los Alamos I would like to focus your attention to that particular incident that has been testified here: Did you ever tell Ruthie that you were now doing the work that you always wanted to do, to engage in getting information to the Soviet Union or to the Russians or words to that effect?

A. I did not.

Q. Now, did you ever tell her at that time that you had learned about the atomic bomb from friends?

A. I did not.

Mr. E. H. Bloch: May I have the exhibit with the picture of Yakovlev?

(Photograph handed to E. H. Bloch.)

Q. Now, I am going to show you Government's Exhibit 15 [fol. 1592] in which there appears a photograph of a man by the name of Anatoli Yakovlev, and after looking at that picture can you tell us whether you recognize who that is?

A. No, sir, I have never seen this man in my life.

Q. Did you ever know any Russian by the name of John?

A. No, sir, I did not.

Q. Did you know any Russian who was connected with the Soviet Embassy or any of the Soviet Consulates or any official of the Russian Government at any time in your life?

A. I did not.

Q. Now, to come to the time when your brother in law

Dave came on his first furlough from New Mexico to New York in January 1945——

The Court: Excuse me: Did you know anybody at all in the Russian Consulate office?

The Witness: I did not, sir.

Q. Now, to come to the furlough around January 1945 when Dave came in: Where were you working at that time?

A. In January 1945 I was working as assistant to the area officer of the Signal Corps, branch of the Air Corps at that time.

Q. Did you go to work every day?

A. Yes, I did.

Q. During this period?

A. Yes, sir.

[fol. 1593] Q. And what time were you required to report for work?

A. At 9 o'clock in the morning.

Q. And can you tell us now where you reported for work in January 1945 while employed in the capacity you have just described for the United States Government?

A. Well, the area that we were in charge of was the west side of Manhattan from 14th Street all the way up to Westchester and I would report to the headquarters usually of that area officer which was Reeves, a crystal plant.

Q. Now, there has been a mention here of Reeves Instrument Company; was this Reeves concern, that you just say you had to report to in January 1945, the same Reeves Instrument Company?

A. I do not know, sir. It may have been connected.

Q. Well, is there anything in your mind now about the name of that company or any name or any word in that name of that company that differentiates it from Reeves Instrument Company?

A. No, I can't recall, but I could say that the Reeves headquarters, that I had to go to, was, I believe, on the west side of Manhattan.

Q. Do you know about what street?

A. No, I can't recollect. It was in the fifties, I believe.

Q. And is that as close as you can get to it?

A. Yes, sir.

[fol. 1594] Q. How long had you been reporting to that particular Reeves building or office?

A. Well, it was no more than a period of three months.

Q. About this period?

A. That's right, sir.

Q. Who was your superior at that time?

A. Lieutenant Olcott, who was the area officer.

Q. And was this office in this Reeves office or building?

A. That's right, sir.

Q. Now, you said that you had to report at 9 o'clock in the morning; is that correct?

A. That is correct.

Q. I want you to tell the Court and jury how you used to go to work from your residence at 10 Monroe Street to the place where you were required to go to work in January 1945?

A. Well, I would leave my apartment; walked down Monroe Street; cross over to Madison Street; walk about three blocks on Madison Street to the Eighth Avenue Subway; go down the subway and take the Eighth Avenue subway up to the fifties.

Q. There has been testimony by the Greenglasses here that at that time they lived at 266 Stanton Street; do you know where that is?

A. Yes, sir.

Q. Did you ever have to go from your house to any place in the neighborhood of 266 Stanton Street, as a direct route, to report to work during that period?

A. No, sir; I did not.

[fol. 1595] Q. How does one go from your residence at 10 Monroe Street to 266 Stanton Street?

A. Well, you walk down Catherine Street until you get to east of Broadway and you take the Avenue B bus.

The Court: What is the relevance of this?

Mr. E. H. Bloch: Well, if the Court please——

The Court: I am going to permit you the widest latitude. Let's not overdo it.

Mr. E. H. Bloch: I am telling you why I am doing this, your Honor. The Greenglasses testified, I believe, that this defendant came around to their house in the morning, about two or three days after Dave Greenglass came on his fur-

lough, and then he is alleged to have said, "What is your information? Write it down"; and then the following morning he came back and he was supposed to——

The Court: It is not a direct route; it is an indirect route; is that what you are trying to show?

Mr. E. H. Bloch: Well, no, you see the improbability, your Honor.

The Court: Go ahead.

Q. Well, at any rate, how long does it take you to get from 10 Monroe Street by transportation to 266 Stanton Street?

A. About a half hour.

Q. Did you ever use any route to get to your place of [fol. 1596] business, which took you anywhere near 266 Stanton Street?

A. No, sir; I did not.

Q. Now, did you at any time while Dave Greenglass was here on his first furlough in about January 1945 ever go to Dave Greenglass' house in the morning?

A. I did not.

Q. To get information from him?

A. No, sir; I didn't get—go to get any information.

Q. Now, did you, while Dave Greenglass was on his furlough here, ever introduce Dave Greenglass to a man on First Avenue, I believe, somewhere between 42nd and 59th Street, where Dave Greenglass came up in an automobile and you introduced him to a man, and the man got in the automobile with him; then they drove around and they came back; and then you went with this man and Dave left; did any such incident ever occur?

A. That incident never occurred, sir.

Q. Now, I would like to direct your attention to the time when you invited Dave Greenglass and Ruth Greenglass to your house for dinner; that did occur, did it not, on Dave's first furlough?

A. Yes, it did.

Q. And could you tell us now from your recollection whether or not there was a woman by the name of Ann Sidorovich present?

A. I could not, sir.

Q. Do you know Ann Sidorovich?

A. Yes, I do.

Q. How long have you known her?

A. Well, later on in the year that we moved into [fol. 1597] Knickerbocker Village, the Sidoroviches took an apartment on the floor above us.

Q. Were they neighbors of yours?

A. Yes, sir; they were.

Q. Were they neighbors of yours in January 1945?

A. No, they were not.

Q. To the best of your recollection, when did the Sidoroviches move out of Knickerbocker Village?

A. Well, I am not exactly clear on it, but I think they lived in Knickerbocker approximately one year.

Q. Would that mean, according to your best recollection, they moved out of Knickerbocker Village sometime in the year 1943?

A. That is correct.

[fol. 1598] Q. And do you know to where the Sidoroviches moved?

A. Well, at that time they bought a house in Chappaqua, Westchester.

A. And is Chappaqua a suburb near White Plains, New York?

A. Yes, it is.

Q. And did you ever visit the Sidoroviches at their house in Chappaqua?

A. Yes, I did.

Q. And did they ever visit you at your house after they moved away from Knickerbocker Village?

A. Yes, they did.

Q. Did you know Mr. Sidorovich prior to the time that you knew Mrs. Sidorovich?

A. Yes, I did.

Q. Where did you first meet Mr. Sidorovich?

A. I met Mr. Sidorovich at Seward Park High School in some of my classes.

Q. Did Mr. Sidorovich attend classes with you at CCNY?

A. No, he did not.

Q. Did you subsequently meet Sidorovich at a place where you were employed, after you graduated from college?

A. Yes, I did.

Q. And where is that place?

A. That was at Paul Williams' place.

Q. And was that one of the places that you recounted to us yesterday?

A. Yes, it was.

Q. Now did you ever invite Ann Sidorovich to your house [fol. 1599] to meet the Greenglasses for the purpose of effecting an introduction between Ann Sidorovich and the Greenglasses so that Ann Sidorovich could go out to the Southwest or the West and exchange some information with the Greenglasses?

A. I didn't do any such thing?

Q. Did you ever engage in any illegal activities or have any understanding——

(Mr. Saypol rises.)

Mr. E. H. Bloch: I withdraw that, Mr. Saypol.

Mr. Saypol: I would rather have the jury judge that.

Q. Did you ever have any discussion with Ann Sidorovich or her husband at any time with respect to getting any information relating to the national defense in this country?

A. I did not.

By The Court:

Q. Did you ever discuss with Ann Sidorovich the respective preferences of economic systems between Russia and the United States?

A. Well, your Honor, if you will let me answer that question in my own way I want to explain that question.

Q. Go ahead.

A. First of all, I am not an expert on matters on different economic systems, but in my normal social intercourse with my friends we discussed matters like that. And I believe there are merits in both systems, I mean from what I have [fol. 1600] been able to read and ascertain.

Q. I am not talking about your belief today. I am talking about your belief at that time, in January 1945.

A. Well, that is what I am talking about. At that time, what I believed at that time I still believe today. In the first place, I heartily approve our system of justice as performed in this country, Anglo-Saxon jurisprudence. I

am in favor, heartily in favor of our Constitution and Bill of Rights and I owe my allegiance to my country at all times.

By Mr. E. H. Bloch:

Q. Do you owe allegiance to any other country?
A. No, I do not.
Q. Have you any divided allegiance?
A. I do not.
Q. Would you fight for this country——
A. Yes, I will.
Q. —if it were engaged in a war with any other country?
A. Yes, I will, and in discussing the merits of other forms of governments, I discussed that with my friends on the basis of the performance of what they accomplished, and I felt that the Soviet government has improved a lot of the underdog there, has made a lot of progress in eliminating illiteracy, has done a lot of reconstruction work and built up a lot of resources, and at the same time I felt that they contributed a major share in destroying the Hitler beast [fol. 1601] who killed six million of my co-religionists, and I feel emotional about that thing.
Q. Did you feel that way in 1945?
A. Yes, I felt that way in 1945.
Q. Do you feel that way today?
A. I still feel that way.

The Court: Did you approve the communistic system of Russia over the capitalistic system in this country?

The Witness: I am not an expert on those things, your Honor, and I did not make any such direct statement.

Q. Did you ever make any comparisons in the sense that the Court has asked you, about whether you preferred one system over another?
A. No, I did not. I would like to state that my personal opinions are that the people of every country should decide by themselves what kind of government they want. If the English want a King, it is their business. If the Russians want communism, it is their business. If the Americans want our form of government, it is our business. I feel that the majority of people should decide for themselves what kind of government they want.

Q. Do you believe in the overthrow of government by force and violence?

[fol. 1602] A. I do not.

Q. Do you believe—do you believe in anybody committing acts of espionage against his own country?

A. I do not believe that.

Q. Did you unhesitatingly express, in substance, the thoughts that you have just expressed about the Soviet government, the American Government, to your friends and to your relatives?

Mr. Saypol: Well, I submit, if your Honor please, just a moment ago in response to the Court's question the witness answered that he did not know enough about it and never talked to anybody about it.

Q. Well, do you presume to be an expert on government?

A. Well, I am not an expert but I talked about these matters.

Q. Have you read books?

A. Yes, some books I have read.

The Court: Well, did you ever belong to any group that discussed the system of Russia?

The Witness: Well, your Honor, if you are referring to political groups—is that what you are referring to?

The Court: Any group.

The Witness: Well, your Honor, I feel at this time that I refuse to answer a question that might tend to incriminate [fol. 1603] me.

Q. Are you——

Mr. Saypol: Just a moment. May I clarify that?

The Court: It seems to me I have been hearing a lot about that.

Q. Are you referring to membership in the Communist Party?

A. Well, I am referring to membership in any political organization like the Communist Party.

Q. And when you answered the Court's question did you have in mind the Communist Party?

A. Yes, I did.

The Court: Well now, I won't direct you at this point to answer; I will wait for the cross-examination.

Q. Do you want to say anything more about ideas on politics—if the Court wants it, I don't know.

A. I can say this——

The Court: No, he has replied.

Mr. E. H. Bloch: All right, may I then continue, your Honor?

The Court: You may continue.

Mr. E. H. Bloch: I am trying to do this chronologically.

The Court: Go ahead.

Q. You now say that you cannot tell us with certainty whether or not Ann Sidorovich was present on that evening [fol. 1604] when you had invited the Greenglasses over to your house?

A. Well, I can't recall.

Q. She has been over to your house on a number of occasions?

A. Yes, she has been.

Q. Now you say the Sidoroviches moved out of Knickerbocker Village in 1943 and moved to Chappaqua, is that right?

A. That is correct.

Q. Did you spend any vacation at Chappaqua with the Sidoroviches, with your family?

A. Yes, in the spring of 1944 with my wife and child Michael we spent a vacation there.

Q. Now did there come a time when the Sidoroviches moved from Chappaqua?

A. Yes, there did come a time.

Q. Do you know to what place they moved?

A. Yes, I do.

Q. Where did they move to?

A. They moved to Cleveland.

Q. Did you receive any communication from them while they were residing in Cleveland?

A. Yes, I did.

Q. Tell the Court and the jury what kind of communication you received from the Sidoroviches?

A. We received Christmas cards on occasion, and when their child was born we received an announcement card of the birth of their child.

Q. Did you ever visit the Sidoroviches in Cleveland?

[fol. 1605] A. No, I did not.

Q. Did the Sidoroviches ever visit you after they had moved to Cleveland?

A. I do not recall. There may have been an occasion.

Q. How long would you estimate the Sidoroviches have lived in Cleveland?

A. I can't tell exactly.

Q. Is it four years or five years or six years? Would that help you in any way?

A. I would venture a guess for about five years.

Q. Now let us come to this night when the Greenglasses were in your house: Did you ever have any transaction with the Greenglasses in which a Jello box was involved?

A. No, I did not.

Mr. E. H. Bloch: May I have the Jello box?

(Handed.)

Q. Now I show you Government's Exhibit 4 and I show your Government's Exhibits 4-A and 4-B, Government's Exhibit 4 being an ordinary Jello box that is in use and 4-A and 4-B being one of the sides of a Jello box which has been cut out for certain purposes of this trial, and ask you whether or not you ever, or whether your wife ever cut the side of a Jello box in the manner in which 4-A and 4-B are cut, or whether you cut any side of any Jello box at any time?

A. I did not.

Q. With the Greenglasses present?

A. I did not.

[fol. 1606] Q. Did any such incident ever take place?

A. It never did.

Q. Now, did you or your wife say the evening that the Greenglasses came over to visit you in that January 1945 period that your wife Ethel was very tired because she was up late typing material for the Russian government or for the Russians?

A. I did not say anything of the sort.

Q. So far as you know, did your wife ever type any material for transmission to the Soviet Union or the Russian government?

A. She did not.

Q. Did you ever type any material for transmission to the Soviet Union or the Russian government?

A. I did not.

Q. Or any citizen or subject of Russia or any Russian?

A. No, sir, I did not.

Q. Did you on that occasion as substantially testified to by the Greenglasses say that the money that you had given Ruth or advanced to Ruth when she went out in November could be forgotten about and they could consider that a gift? Did you say anything about that subject?

A. I didn't say anything about that subject because I didn't give them any money.

Q. Did you say at that time to them in connection with this Jello box incident which you heard the Greenglasses [fol. 1607] describe on the stand, "the simplest things are very cleve, or always clever"?

A. No, I didn't say anything of the sort.

Q. Did you tell Ruth or Dave Greenglass that you were entertaining and spending $50. or $75. a night in connection with your espionage work?

A. I didn't tell Dave or Ruth Greenglass or anybody that.

Q. Did you ever entertain anybody for any espionage work?

A. I did not, sir.

Q. Tell me, how many suits have you bought for the last eleven years?

A. About five suits.

Q. Did you come into court with a coat?

A. Yes, sir.

Q. When did you buy that coat?

A. I would say it was either 1941 or 1942.

Q. Did you ever buy a winter overcoat since then?

A. No, sir, I did not.

Q. How much did you pay for that coat?

A. Well, I estimate it was somewhere about $55.

Q. How much do you pay for your suits?

A. About $26.

Q. Tell us what clothes you bought for your wife just roughly during this 11-year period from 1940 to 1950?

A. When I got a per diem check once while working for the Government.

Q. When was this?

A. I think it was about the same time I bought my coat, I bought her a fur coat.

[fol. 1607A] Q. How much did you pay for it?

A. $80., and we remodeled it a couple of times and she still has it. Well, my wife bought her own clothes. I didn't buy her clothes for her.

Q. Do you know about how much she spent on clothes for the last ten years?

A. Well, sir, I would estimate a maximum of about $300.

[fol. 1608] Q. Now, give us your best recollection of what actually occurred when the Greenglasses came to visit you that night?

A. What night are you referring to, Mr. Bloch?

Q. We are talking about the night that you invited them, when Dave was here on his first furlough?

A. Well, it was a family gathering. We talked about my child, and told them I am working with the Army; I am working hard; and we told them how we were and we asked him how he was. He told us he was fine; he said he was a machinist at that time, and he just repeated that he was a machinist.

By The Court:

Q. Didn't you know he was a machinist in '44, when you saw him?

A. Yes, but he said he was working as a machinist at that time. I knew he was a machinist in '44; he was a machinist before he went into the Army, but he said his assignment was that he was a machinist and he just repeated that he was working on a secret project, and I didn't press him on anything like that.

By Mr. E. H. Bloch:

Q. Did he tell you at that time he was working at Los Alamos?

A. No, he did not.

Q. Did he tell you at that time that he was working on the atom bomb Project?

A. No, sir; he did not.

[fol. 1609] Q. Did you mention anything about atom bomb at that time?

A. I did not.

Q. Did you know anything about atom bomb at that time?

A. I did not.

Q. Did you discuss politics with them that night?

A. Well, as every intelligent American did in those times, we discussed the war.

Mr. Saypol: May I ask to have the answer stricken as not responsive.

Mr. E. H. Bloch: I consent.

Mr. Saypol: I don't want this man set up as a standard for intelligent Americans.

Mr. E. H. Bloch: Now, I move to strike out Mr. Saypol's statement.

The Court: Disregard Mr. Saypol's statement and strike from the record "intelligent Americans."

Q. Never mind about any intelligent American. We are asking you whether you and your wife and sister-in-law and brother-in-law discussed politics?

A. Yes, we discussed the war.

Q. Was that unusual for you to discuss politics with your family or friends?

A. No, it was not.

Q. Have you any independent recollection of what specific subject you discussed that night with Dave and Ruth?

[fol. 1610] A. Well, we were talking about the effort all the different Allies were making in the war and we noted that the Russians were carrying at that particular time the heaviest load of the German Army.

Q. Did there come a time when Dave left to go back?

By The Court:

Q. Did you express any opinion that the Russians were not getting the cooperation from the Allies that they were entitled to?

A. No, I expressed the opinion that I felt that it was my opinion, not as an expert, but as an individual, that there

should be a second front at that time. I don't remember if it was at that time.

Q. What I am asking you is, did you express the opinion that the Allies—that the Russians were not getting the cooperation from the Allies that they were entitled to?

A. No, I didn't express that opinion, sir.

Q. Well now, had you already met Mr. Elitcher, had you not, by that time?

A. What time?

Q. January.

A. January, '44?

Q. '45.

Mr. E. H. Bloch: '45.

A. Yes, I had met Mr. Elitcher.

Q. And you had seen him in Washington?

A. Yes, sir.

[fol. 1611] Q. In June of '44; is that correct?

A. Now, I don't remember the exact time. Can I discuss that?

Mr. E. H. Bloch: Certainly, tell the Court at what time you saw him.

The Court: If you would rather hold that, if you want the details, Mr. Bloch?

Mr. E. H. Bloch: I was going to come to that, your Honor. If your Honor wants that now, you may have it.

The Court: All right.

Mr. E. H. Bloch: Will your Honor reserve the question? I will come to the Elitcher visits.

The Witness: Do you want me to answer?

The Court: Your lawyer wants the question held in abeyance.

Mr. E. H. Bloch: We will come to the Elitcher visits.

By Mr. E. H. Bloch:

Q. You did see Mr. Elitcher sometime in 1943 and '44 in Washington, did you not?

A. Yes, sir.

Q. Were you working for the Government at that time?

A. Yes, I was.

Q. Did there come a time when you were assigned by the Government here in New York to go down to Washington [fol. 1612] and to work at the Bureau of Standards for a couple of days?

A. Yes, there did come a time.

Q. And it was during that period that you saw Mr. Elitcher and came over to his house?

A. That's right, sir.

Q. Now, we will come to the conversation you had with Elitcher later, but I wanted the Court to be apprised of your visit there. Did there come a time when Dave Greenglass left New York to go back to the Southwest.

A. Yes, there came a time when he went back to his camp.

Q. Did you see Dave Greenglass at any time during the period after he went back in January, '45 to the time he came back to New York later that year?

A. No, I did not.

Q. Did you see Ruthie Greenglass?

A. Yes, I did see Ruthie Greenglass.

Q. When was the first time that you saw Ruthie Greenglass after Dave went back?

A. Well, between the time that Dave Greenglass left for his camp and the time that Ruth Greenglass went to live with him, I saw Ruth Greenglass.

Q. Do you know whether the Greenglasses gave up their apartment on Stanton Street when Ruthie went out to live with Dave at camp?

A. I am not certain of it, but I believe they did.

[fol. 1613] Q. Now, when you say you saw her again, did you see her in their Stanton Street apartment?

A. I think I did.

Q. I want you to tell the Court and jury the circumstances under which you saw her that time?

A. Ruthie called me up and told me she wanted to see me.

The Court: When is this? Did you fix the time?

Mr. E. H. Bloch: Yes.

Q. Now, can you fix the time, as best you can?

A. Well, Mr. Bloch, it is so many years ago, I am hazy about the exact time. I can just specify it, it is between the time Dave Greenglass left for his camp and the time Ruth

Greenglass left to live with him. I don't know the exact number of months, something like that.

Q. That would make it, according to the testimony we have had so far, sometime between the middle of January 1945 and March or April 1945; does that mean anything to you?

A. Yes, it would be in about that period.

Q. Could you tell us whether it was early February or late February?

A. I can't be specific, but I would say it probably was [fol. 1614] in February. It was not long after he left.

Q. Well, does this refresh your recollection: Do you remember when you started to work for Emerson Radio?

A. Yes, late February.

Q. Was it before you started to work for Emerson Radio?

A. I cannot recall.

Q. At any rate, there came a time when you say you received a telephone call from her?

A. That's right.

Q. And what did she say to you?

A. She would like to see me.

Q. Did you go over to see her?

A. Yes, I went over to see her.

Q. Tell us what happened when you went over to see her?

A. It was one evening after supper, I don't know how many days it was after she called, and I went up to her apartment; it was on Stanton Street; and I when I entered the apartment she whispered in my ear, "I would like to talk to you alone. Tell the kid to go into the bathroom."

Q. Now, when you refer to "the kid," to whom are you referring?

A. Well, her sister, Dorothy Printz, was in the room.

Q. Did you see Dorothy Printz here on the stand?

A. Yes, I did, and that is how——

[fol. 1615] Q. Is that the girl to whom you are referring?

A. Yes, and that is how I recalled the incident, because when she testified here in court I remembered being at her house.

Q. All right. Now, then what happened?

A. Well, after Dorothy went into the bathroom——

Q. Who told Dorothy to go in the bathroom?

A. I did.

Q. Go ahead. Now tell us what the conversation was?

A. Ruthie told me something to this effect: "Julius, I am terribly worried. David has an idea to make some money and take some things from the Army"; and I told her, "Warn David not to do anything foolish. He will only get himself in trouble. I have read some accounts in the newspapers about some G. I.'s doing foolish things and taking parts and gasoline from the Army, and their getting themselves in trouble," and I told her, "Don't tell—make sure to tell him that he doesn't do anything of the sort".

By The Court:

Q. Well, did she say what he wanted to take?

A. No, she did not. She just mentioned the word "things". That is what I can remember in my mind.

Q. Did she say what he wanted to do with it after [fol. 1616] he took it?

A. No, she didn't. She just said he wanted to make some money.

Q. You didn't know whether he wanted to take something for his own use or whether he wanted to give it to somebody else?

A. I have no idea, sir.

By Mr. E. H. Bloch:

Q. Was any discussion had at that time about any matters relating to the national defense of the United States?

A. No, sir; there were no discussions.

Q. Was there any talk at that time about any information which was to be conveyed to the Los Alamos Project?

A. No, there was no talk like that.

By The Court:

Q. When had you seen her before? You said about a month before?

A. I saw her when Dave and Ruth were over our house for dinner, and possibly I saw them at my mother-in-law's house again before they left, before Dave left for his camp.

Q. So that when they were over at your home for dinner,

there was no discussion at that time about him wanting to do anything foolish, in taking things from the Army?

A. No, there was no discussion at that time.

Q. As far as you know, Ruth Greenglass had not seen David Greenglass between the dinner at your home and [fol. 1617] the time she came to see you?

A. She came to see me?

Q. Rather, you came to see her.

A. Well, they were together on furlough all the time he was in.

Q. Well, after he left and went back, and this is at the end of February that she came to see you, as far as you know, after he went back at the end of January, until the end of February, she had not seen him?

A. I didn't specify, sir, what part of February it was, because I don't recall, and I didn't know exactly when she had seen him last. The last time she saw him was on the last day of his furlough.

The Court: Very well.

A. (Continuing) I don't know whether she spoke about these matters.

Q. It was sometime after he went back on his furlough that she came to see you; isn't that right?

A. She didn't come to see me.

Q. Rather, you came to see her.

A. Right.

Q. It was sometime after he went back?

A. That's right.

The Court: Proceed.

By Mr. E. H. Bloch:

Q. Have you any knowledge as to whether or not Ruthie Greenglass communicated with Dave Greenglass from the [fol. 1618] time Dave Greenglass went back to his camp in New Mexico, at the end of his furlough, to the time you saw her, with respect to this conversation that you just testified about? That is what the Judge wants to know.

A. I have no knowledge, but they may have sent letters to each other.

By The Court:

Q. In other words, then you are saying now that this information of Ruth Greenglass probably came in a letter?

A. I am not saying anything of the sort, sir.

Q. All right, you don't know how it came?

A. No, sir.

Q. Now, can you think of any reason why she came to see you about it? Were you closest to them?

A. Well, I was a relative and she wanted my opinion on it.

Q. Well, I know you are a relative. They had other relatives. Is there any particular reason that you can think of that she came to see you?

A. Well, I was the brother-in-law of Dave; his other brother was overseas; and his other brother was married and living away from home. I was the only close relative around, I guess.

The Court: All right.

[fol. 1619] By Mr. E. H. Bloch:

Q. I now show you Government's Exhibit 5 (handing to witness), and ask you whether or not you ever met that man, at any time?

A. No, I did not, sir.

Mr. E. H. Bloch: May I just for the elucidation of the jury state that I am referring to Harry Gold?

Q. Did you ever talk to Harry Gold in your life?

A. No, I did not.

Q. Did you know who Harry Gold was or what his activities were, until you read about it in the newspapers, after his arrest?

A. I did not know about his activities until I read about him in the newspapers.

Q. Did you know anything about an incident, which has been testified hereto by Ruth and Dave Greenglass and by Harry Gold, that occurred in Albuquerque, New Mexico, on June 3, 1945, where Gold gave your brother-in-law Dave $500. and Dave gave him some sketches and some information?

A. I did not.

Q. Did you know about that incident?

A. I did not know of any such incident.

Q. When was the first time that you found out that such an incident took place?

A. When I heard it in the courtroom.

Q. Did you see Harry Gold or did you see any Russian or did you see any person with respect to arranging a [fol. 1620] meeting between Harry Gold and the Greenglasses in New Mexico, in June 1945?

A. I did not.

Q. Or at any other time?

A. I did not.

Q. Now your sister-in-law, Ruth Greenglass, testified—and I want to come back for one second to that meeting at your house—that she had a miscarriage sometime in May 1945; do you remember that?

A. Yes, I heard it.

Q. And did you also hear her testify that in your house, when they came over on Dave's furlough in January 1945 there was some talk about having some emissary or courier meet them at a Safeway store in Albuquerque? Do you remember that testimony?

A. Yes, I do.

Q. Was any Safeway store mentioned in your house that evening?

A. It was not.

Q. Or at any other time?

A. It was not.

Q. With respect to the Greenglasses?

A. It was not.

Q. Have you any independent recollection now when you found out that Ruthie had a miscarriage out in New Mexico in May 1945?

A. No, I did not.

Q. Did you communicate with the Greenglasses from the time Dave left New York on his furlough in January 1945 until June 3, 1945?

A. No, I did not.

[fol. 1621] Q. By telephone?

A. I did not.

Q. Or by letter?

A. I didn't write them.

Q. Or in any way?

A. No, I did not.

Q. Whether through yourself or through anybody that you authorized to communicate with them?

A. I didn't authorize anybody to write them.

Q. Now both Dave Greenglass and Ruth Greenglass testified that Dave Greenglass had a second furlough in 1945 and I believe he said it was September 1945.

Now, before we come to that second furlough in New York, I want to ask you whether or not you ever communicated with Dave Greenglass or Ruth Greenglass from June 3, 1945 until Dave came back here on the second furlough?

A. I did not communicate with them.

Q. Do you know whether or not your wife communicated with the Greenglasses at any time after Dave left New York on his first furlough, after his first furlough until Dave came on in his second furlough that year?

A. I know it was usual for my wife to write to her brothers in the camps.

Q. Your wife did correspond with Dave and Ruth, did she not?

A. She did.

Q. And do you know whether or not she corresponded for herself alone or whether she corresponded for others also?

A. Well, she would go over to my mother-in-law's house [fol. 1622] on Sheriff Street and send letters to the boys from there.

Q. Do you know whether or not your mother-in-law can write English?

A. Very poorly.

Q. Does that bring anything to your mind as to why your wife wrote for your mother-in-law?

A. That's correct.

Q. Was that the reason?

A. That's the reason.

Q. Did your wife Ethel ever tell you at any time that she wrote to Ruthie that a "Relative or a friend will come out to see you at the appointed place sometime in the second or third Saturday of May 1945"?

A. She didn't tell me anything of the sort.

Mr. E. H. Bloch: Now, I wonder whether I could have the sketches that Dave Greenglass turned over to Gold.

(Handed by Mr. Cohn to Mr. E. H. Bloch.)

Q. Now I am going to come back to an incident which you heard testified about here, on June 3, 1945 between the Greenglasses and Gold at Albuquerque, New Mexico. You heard that testimony about that incident, didn't you?

A. I did.

Q. Now before we come to that I would like to ask you one general question covering this period: Did you ever receive from Dave Greenglass or Ruth Greenglass, up to [fol. 1623] June 3, 1945, or at any time thereafter any information concerning the Los Alamos Project, whether it be the names of scientists or whether it be any personnel or whether it be any possible employees there who could have been recruited for espionage purposes or whether or not there were any sketches in connection with that Project, or whether or not there were any descriptions of the sketches? Did you at any time receive any such information from Dave Greenglass or anybody else?

A. I did not.

Q. Did you ever ask him or Ruthie to get you such information?

A. I never asked them.

Q. Now I am going to show you Government's Exhibits 6 and 7, which according to Ruth and Dave Greenglass and also Harry Gold were turned over by Dave Greenglass to Harry Gold in Albuquerque, New Mexico, on June 3, 1945, and after looking at them I want you to tell the Court and jury whether you ever saw any sketches like that, or substantially like that in your life?

A. I never did, sir.

[fol. 1624] Q. Did sketches substantially similar to Government's Exhibits 6 and 7 ever come to your attention from anyone until you heard these things drawn or exhibited in court here?

A. I did not.

Q. Now did there come a time when Dave Greenglass came here to New York City on his second furlough in 1945?

A. Yes, there did come a time.

Q. Do you have any independent recollection as to the month he came here prior to the time you came to court and heard the Greenglasses testify?

A. No, I do not have any recollection.

Q. And after hearing them testify can you tell us with definitiveness what month it was that he came here on his second furlough?

A. No, I could not.

Q. Well, could you tell us from your independent recollection, your own independent recollection, what part of the year it was?

A. I believe it was the fall of the year.

Q. You will not dispute that it was September, will you?

A. Well, I can't dispute any month because I can't recall exactly when he was here.

Mr. E. H. Bloch: Do you think this might be an appropriate time for the recess, your Honor?

The Court: All right: We will take a recess.

(Short recess.)

[fol. 1625] By Mr. E. H. Bloch:

Q. I believe, Mr. Rosenberg, we had come to a point where Dave Greenglass had come back to New York on his second furlough in 1945. Did you ever go to a place where Dave and Ruth lived at 54 Sheriff Street the day or the day after he came back to New York and ask him for information that came out of the Los Alamos project?

A. I didn't ask him for any information that came out of the Los Alamos project.

Q. Now there is testimony here——

Mr. E. H. Bloch: If the Court please, I want to ask one or two questions before I come to this.

Q. I want to ask you something: Did you ever know a man by the name of John Golos?

A. No, I did not.

Q. Did you ever know a woman by the name of Elizabeth Bentley?

A. No, I did not.

Q. Did you ever see John Golos in your life?
A. Never did.
Q. Did you ever see Elizabeth Bentley in your life?
A. I saw her on the stand yesterday.
Q. Before that did you ever see her?
A. Never in my life.
Q. Ever talk to her?
A. No, I did not.
Q. Did you ever have any telephone conversation?
A. I did not.
[fol. 1626] Q. In 1942, with Golos or a woman, answer the phone, and you said "This is Julius"?
A. I didn't make any such telephone conversation.
Q. Did you ever authorize anybody to introduce himself to anybody by the introduction "This is Julius," or "Julius sent me"?
A. I did not.
Q. Are you known amongst your friends as Julie or Julius?
A. Julie.
Q. Now, let us come back to September 1945. Did Dave Greenglass and Ruth Greenglass ever come over to your house and deliver to you, whether at your request or without your request, any information about an atom bomb?
A. No, they did not.
Q. Were they over at your house during that furlough?
A. I believe they were.
Q. How many times?
A. I am not certain how many times. They may have been over once. I am not certain they were over once.
Q. May they have been over twice?
A. Possibly.
Mr. E. H. Bloch: May I have that Government's Exhibit 8, please.
The Clerk: It is impounded.
Mr. E. H. Bloch: I wonder whether the Court will indulge me:
Q. Did you come about Government's Exhibit 8, which [fol. 1627] is impounded? Suppose I try to do it this way.
The Court: All right.
Q. Do you remember Dave Greenglass testifying here

with respect to a cross-section of an atom bomb which he is alleged to have given you on his second furlough here in New York in September 1945 at your house?

A. I remember hearing his testimony about it.

Q. Well, do you remember that there was introduced in evidence a sketch?

A. Yes.

Q. Did you ever see that sketch, even here in court?

A. I didn't see that sketch.

Q. Well, did you ever receive a sketch of a cross-section of the atom bomb from Dave Greenglass at the time he was here on his second furlough in 1945?

A. No, I did not.

Q. Did you ever receive a cross-section of a sketch of the atom bomb from Dave Greenglass or Ruth Greenglass at any time?

A. No, I did not.

Q. There has been testimony here that together with that sketch that was delivered to you at your house there were 12 pages of written or typed matter, explanatory or descriptive matter. Did you ever receive such report or description in writing?

A. I didn't receive any such description or report.

[fol. 1628] Q. Did your wife ever type up at your request any matter as a result of your having received any of that 12-page descriptive matter?

A. She did not type any such thing.

By The Court:

Q. Is your wife a typist?

A. Yes, she is.

Q. Do you have a typewriter at home?

A. That is right.

Mr. E. H. Bloch: I am sorry, your Honor.

The Court: Proceed.

By Mr. E. H. Bloch:

Q. What kind of typewriter?

A. A Remington typewriter, I believe. A portable one, we had.

Q. Do you know whether or not your wife was ever engaged as a means of making a livelihood as a typist from the time you were married to her?

A. The first year of our marriage she did some typing work at the place she worked.

Q. Prior to the time of your marriage do you know whether or not your wife made a living as a typist?

A. She did.

By The Court:

Q. When did you say you were married, Mr. Rosenberg?

A. We were married on June 18, 1939.

Q. What sort of typing did your wife do at the house [fol. 1629] in 1944, if any?

A. I don't recall her doing the typing at the house at all.

Q. How about 1945?

A. 1945, too.

Q. You mean, no typing?

A. No, we didn't do any typing. If I wanted to write a letter for business or for a job or something like that that needed to be typed, I would have her do it for me.

By Mr. E. H. Bloch:

Q. Well, was your wife engaged in any activities on behalf of any organizations, whether they be civil defense organizations or other organizations, during the years of your marriage with her?

A. Yes, she was.

Q. Will you tell us whether she did any typing in connection with that work?

A. She did.

Q. Much?

A. Quite a bit.

Q. What?

A. Quite a bit.

The Court: Of course, you said she did practically no typing in 1944.

The Witness: I was referring to typing for our own personal needs, but she did type—she did typing for the Civilian Defense Council on the east side, and for my union.

Q. What union did you belong to?

A. The Federation of Architects and Engineers.

[fol. 1630] The Court: You mean the union didn't have a typist there?

The Witness: Well, they had but she was a volunteer worker when I was a member of that union.

Q. Were you active in that union?

A. Yes, I was.

Q. And what did you do during most of the years in that union in terms of activity?

A. Well, for a period of time I was chairman of the Federal Civil Service Committee of that union.

Q. And in connection with that activity did you help members of that union with respect to keeping their positions?

A. That is correct.

Q. And did you handle grievance cases?

A. Yes.

Q. For that union?

A. Yes.

Q. Mr. Rosenberg, you see, you lapse into the same habit that some of the others did.

A. I am sorry.

Q. You are lowering your voice. Speak up. Did your wife help you with any of that work?

A. Yes, at times she did.

Q. Was it very often?

A. I would say on and off.

Q. Is that your best answer?

A. That is my best answer.

Q. Now, let us come back to September 1945. Did you [fol. 1631] ever take any material that was ever transmitted to you by Dave or Ruth Greenglass and turn it over to the Russians or anybody else?

A. No, I did not.

By The Court:

Q. Did you know any Russians at that time? By Russians I mean people who were Russian citizens.

A. You mean citizens of Russia?

Q. That is correct.

A. No, I didn't.
Q. Didn't know any at all?
A. None at all.

By Mr. E. H. Bloch:

Q. Did you give to Dave Greenglass $200. in cash when he was here on his second furlough in September 1945?
A. I didn't give him any $200. then.
Q. Did you give him any money?
A. What time, sir?
Q. September 1945.
A. No, I did not.
Q. There came a time when you did loan him some money?
A. That is right, sir.
Q. In what denomination?
A. Five, ten, twenty dollars.

Mr. E. H. Bloch: I will fix the time, Mr. Saypol. I wanted to do this chronologically. I am going to come to it, your Honor.

(Record read.)

Mr. E. H. Bloch: Well, suppose we complete that picture [fol. 1632] now so there will be no doubt about it.

Q. When did you advance or loan any money to Dave Greenglass?
A. 1948 and 1949.
Q. And was that while you were in business with him in the Pitt Machine Products Company?
A. That is right, sir.
Q. Now, look, please, I can't even hear you.
A. I am sorry.
Q. Tell the circumstances of those advances.
A. Well, David kept telling me he needed money for his household expenses and he asked me if I could advance him a few dollars, and if I had some money in my pocket, I split it in half and usually gave him half of that amount. Over a period of two years before he left the Pitt Machine Products there was a total of approximately $300. that I had loaned to him at that time. When we spli!—when he left the Pitt Machine Products and a settlement was made

on the common family debt—I don't know if it has been explained.

Q. Well, you are explaining it now. Now explain it fully.

A. Bernard Greenglass, in the G & R Engineering Company, had loaned to the company moneys that he had borrowed himself from the family, $5,000. When the G & R Engineering Company became the Pitt Machine Products Company, we had paid back to him through the company [fol. 1633] about a thousand dollars, so about $4,000, was still due Bernard Greenglass. When the two boys left the company, we had a common understanding that we would share the family debt, one third each, and when I made the settlement with Dave and Bernard Greenglass, my share became $600, and what David owed me was added on to his share, and we picked one of the members of the family out, whom $600, was owed to, an uncle of my wife's by the name of Abe Feit, and I was responsible to pay him back; and the other relatives, like my mother-in-law and another aunt and uncle, Isidore Feit, David Greenglass and Bernard Greenglass would pay the money back to them.

Q. Now, is it correct to say that you advanced to David Greenglass, in sums of twenties, tens and five dollars, between the years 1948 and '49, so that there was a total advance of approximately $300.; and then after an arrangement was made to pay off this family debt, that $300. was credited to you in allocating the various amounts of responsibility and obligations that each of you assumed to pay off the total debt; is that an accurate statement?

A. That is correct. I would say that the exact figure of what I lent him, I don't remember, but the figure that I had to pay was, I remember, $600.

Q. So that in that way David Greenglass really returned [fol. 1634] to you the moneys that you had advanced to him; isn't that right?

A. Well, he didn't physically return it to me; he just credited me with the money I advanced him.

Mr. E. H. Bloch: Does that satisfy the Court about this transaction, your Honor?

The Court: You may proceed.

Mr. E. H. Bloch: All right, thank you.

Q. Did you, outside of this $300. advance, in 20s, 10s and 5s, in '49, '48 and '49, ever give any money to Dave Greenglass or Ruth Greenglass or loan them any money?

A. No, I did not, sir.

Q. There has been testimony here that at one time—I think it was in '48, I am not sure of that—you advanced $800.—I think Ruth Greenglass so testified—did any such transaction ever take place?

A. No, it did not.

Q. There has been testimony here—we will come to that—that in 1950, in May you gave Dave Greenglass or Ruth Greenglass $1,000. in cash. Did you ever advance that sum or give that sum to them?

A. I did not.

Q. And there has been testimony here that you in the early part of June 1950 gave to Ruth or Dave Greenglass—I think it was Dave Greenglass—the sum of $4,000. in cash——[fol. 1635] Mr. E. H. Bloch: May I have that brown wrapper, please?

Q. —wrapped in Government's Exhibit 10, and I ask you whether or not any such transaction took place (showing to witness)?

A. No, it did not, sir.

Q. Did you ever have any sum of money wrapped in a wrapper, which has been introduced in evidence as Government's Exhibit 10 (showing)?

A. No, sir; I did not.

Q. Does this Government's Exhibit 10—look at it; pull it out—does that mean anything to you?

A. I am sorry. I can't pull this thing out.

Q. Wait. I will do it. Here, I am going to show you this. Does that mean anything to you (showing)?

A. No, sir; it does not.

Q. Now there is Scotch tape there. Did you ever put any Scotch tape on a wrapper like that?

A. No, but I have used Scotch tape.

Q. There is some little clip here—I don't know—with scissors; there is a little notch here, I thought; maybe I am wrong—oh, yes, here it is, a little notch here. Does that mean anything to you (showing)?

A. No, it does not.

Q. Did you ever have this wrapper at any time, so far as you can remember, in your hand, with any sum of [fol. 1636] money in it?

A. No, I did not.

Q. There has been testimony here from the Greenglasses that at the time you advanced $200, or gave Dave $200, when he turned over to you Government's Exhibit 8, which has been impounded—that is the cross-section of the atom bomb, with the descriptive material of 12 pages—that you said to him, in words or substance, "Forget about the moneys that I had given Ruth. Consider that a present." Did any such conversation take place?

A. It did not.

Q. Did any such incident take place?

A. It did not.

Q. Did you ever, while Dave was in the Army at Los Alamos—I believe he testified it was from August 1944 until about February of 1946—ever communicate with Dave through any means?

A. I did not.

Q. Do you remember when Dave got out of the Army?

A. Well, it must have been some time in '46.

Q. Was it early or was it late in '46?

A. It must have been early, because he went into business with me in the spring of '46.

Q. About how long had Dave been in New York after his discharge from the Army, until he went into business with you in the spring of 1946?

A. I can't tell exactly, about a month or two, I estimate.

[fol. 1636A] Q. Now, during the years 1946, 1947, 1948, did you see Dave and Ruth Greenglass?

A. 1946, '47 and '48?

Q. Yes.

A. Yes, I did.

[fol. 1637] Q. Were those occasions frequent or infrequent?

A. Well, at the shop and my mother-in-law's house, I would say they were at a fairly frequent rate.

Q. Now, let us separate the two. You really were in business as associates—as associates?

A. Correct.

Q. I am talking about you and Dave in '46, '47, '48 in the G. & R. Engineering Company and the Pitt Machine Company?

A. Right.

Q. And you saw Dave almost every day, didn't you, in business until about August '49 when he quit?

A. That is right.

Q. Now how about socially, did you see him frequently?

A. Very infrequently.

Q. And where did you usually see them?

A. At my mother-in-law's house.

Q. Did they ever come to visit you?

A. Yes, I believe so but I can't remember exactly how many times or when.

Q. It wasn't frequent?

A. No, it wasn't frequent.

Q. Did you visit them?

A. Yes, at times I did.

Q. Do you know where they were living at during those years?

A. They were living at Rivington Street.

Q. Now, there has been testimony here that about two or three weeks after Dave came out of the Army he had a [fol. 1638] conversation with you and he stated in words or substance and you advised him to go back to Los Alamos and get a civilian job and keep his contacts? Did you ever have such a conversation with Dave?

A. I did not have such a conversation with him.

Q. There has been testimony here by Dave Greenglass and Ruth Greenglass that sometime during the period 1946 to 1949 you wanted—you conveyed to Dave your ideas about his continuing his education and going to college and getting a degree; do you remember that testimony?

A. Yes, I heard the testimony.

Q. And I think he also testified that you wanted him to go to certain universities to keep up the contacts that he had made at Los Alamos; do you remember that?

A. I remember that testimony.

Q. Did any such conversation take place?

A. It did not take place.

Q. During the years or during those years was there any discussion about Dave's education?

A. Yes, there was.

Q. Now tell the Court and jury just when that took place and what was said?

A. During the existence of the Pitt Machine Products, David, decided to go to night school and—under the G.I. Bill so he could get some subsidies from the Government—and he took an early program and he had to leave the [fol. 1639] shop for three nights a week, two or three nights a week, I don't recall, at about 3 o'clock. And he was foreman of the shop and he had to supervise the employees and I came in in the shop on a number of occasions and noticed that there wasn't anybody there to supervise the employees and I got hold of Dave the next day and I says "Look here, Dave, you are shirking on the job. You are not doing your work. The fellows aren't getting stuff out," and we had discussions over that, and we had arguments about that, and finally David quit school because of that.

Q. Is it fair to say that you objected to his continuing his education at that time?

A. I certainly did.

Q. Was Ruthie present at that time that you had any of these discussions about his continuing at night school?

A. She was present on a number of occasions.

Mr. Saypol: That is not responsive, if the Court please.

The Court: I take it on a number of occasions during the course of the discussions.

The Witness: That is right, sir.

Q. Is that right?

A. That is right.

Q. Try to confine yourself—we will come to other matters [fol. 1640] but try to confine yourself to the discussion about his education.

A. To school, yes.

Q. And can you remember anything now that Ruthie said during any one of these discussions?

A. Yes. Ruth said "You are taking advantage of my husband. After all you have an education, he should have

an education and he is contributing more than you are to the business anyway, because he produces the work and you just get it, and if he gave you four hours a day, that is enough for you. You should let him go to school.

Well, I did not see eye to eye with her on that and we argued about it.

Q. Did you ever mention to Davey that you would support him or get the Russians to support him if he continued his college education.

A. I did not.

Q. Did you ever mention to Davey that he should go to M.I.T.—do you know what M.I.T. is?

A. Sure.

Q. What does that mean?

A. Massachusetts Institute of Technology.

Q. Or Chicago University?

A. I didn't suggest him to go to those places. It was very unlikely that I could suggest it because he probably couldn't get into those places. He didn't have the qualifications.

Q. Did you ever tell Davie or Ruth during the years 1946 to 1949 or at any time that you had a number of [fol. 1641] students attending American universities who were being subsidized by the Russians and who were part of your boys or something like that?

A. I didn't tell him anything of the sort.

Q. Did you have any control over students or did you have any—or did you ever make any arrangements with respect to students attending American universities or scientific schools where you subsidized them in whole or in part, or received money from the Russians to subsidize them in whole or in part?

A. I didn't do anything of the sort.

Q. There has been testimony here that you told Dave Greenglass and Ruth Greenglass—and I am not sure whether it is both or one but at any rate there has been testimony from one or both of the Greenglasses that you told them that you have contacts in your espionage work up-State and in Ohio, and I think they mentioned specifically Cleveland. Did you ever have any such conversation with him?

A. I did not.

Q. I think he also mentioned in connection with up-State contacts, G.E. in Schenectady.

Did you have any contacts with any employee in Schenectady in connection with any business of yours, whether it was—any business of yours?

A. No, I did not have any contact with any employee of G. E. in connection with any business.

[fol. 1642] Q. You knew——

The Court: Excuse me.

By The Court:

Q. Did you know anybody working there?

A. Sure I did.

Q. Whom did you know working there?

A. Morton Sobell.

Q. How long had you known Sobell?

A. I went to school with him.

Q. And you had known him continuously right up until the present day?

A. Well, sporadically for a time and then——

Q. Rather close?

A. Well, he was a friend of mine.

Mr. E. H. Bloch: I will come to that, your Honor. I will try to go into that more in detail.

By Mr. E. H. Bloch:

Q. Were you ever in Schenectady in your life?

A. No, I was not.

Q. Were you ever in Cleveland?

A. No, I was not.

Q. Now there has been a testimony here that sometime in the late part of 1947 there was discussion in your shop at Pitt Machine Products Company where you were there and Dave was there and Bernie was there—Bernie Greenglass, [fol. 1643] that is, Dave's brother—about some Sky Platform Project and you said that you got that information from one of your boys.

Was there a discussion about some Sky Platform Project?

A. Well, there wasn't any discussion about some Sky Platform Project but I would like to explain that.

Q. Well, do it?

A. If you don't mind. I don't remember the specific incident but at that time in the Popular Science magazines and in the newspapers there was some talk about the Germans had done some work on some kind of suspended lens in the sky to concentrate the rays of the sun at the earth, and that is what I believe was the discussion we might have had at that time. Greenglass used to read the Popular Mechanics and the Popular Science and he always talked about things like that at the shop.

The Court: Did you read it too?

The Witness: No, I didn't.

Q. Do you remember who initiated the discussion?

A. I can't recall.

Q. Did you ever say at that time that you got the information from one of your boys?

A. I did not.

Q. Now, there has been testimony here that you told Dave Greenglass at some time—and I don't know just [fol. 1644] when but at any rate there has been testimony that you disclosed to him the method by which you communicated with the Russians and that you said you used to communicate with him through a moving picture theatre where there was an alcove and certain microfilms was left in the alcove and they would pick it up or you would pick it up—in substance, something about a motion picture alcove where information was transmitted.

Did you ever have any such conversation?

A. I didn't have any such conversation.

Q. Did you ever go to any motion picture theatre and put anything like microfilm or any other material in a place like that so that somebody else could get it?

A. No, I didn't do anything of that sort.

Q. Whether it be the Russians or anybody else?

A. No, I did no such thing.

Q. Incidentally, I think it was Miss Bentley who testified that after Golos died she had contact with a man connected with the Russian Consulate by the name of Gromov—I think that was it—G-r-o-m-o-v.

Did you ever know such a man?

A. No, I did not.

Q. Did you ever tell Dave Greenglass that you or your crowd or your boys or your friends engaged in espionage [fol. 1645] work, had gotten information about the mathematics on atomic energy for airplanes?

A. I did not.

Q. Now let us come down to 1950. There has been testimony here that after Dr. Klaus Fuchs was arrested, you came over to see the Greenglasses, and, in substance you told them that Dave ought to leave the country.

Did any such conversation take place?

A. It did not.

Q. He testified, I believe—and when I say "he" I mean Dave Greenglass, testified that at that time you took a walk with him in some park—was it Hamilton Fish Park?

A. That's what he said.

Q. Did any such walk occur in which such a type of conversation that I have described take place?

A. No, it did not take place.

Q. Did you subsequently take a walk with Dave Greenglass in that park?

A. Yes, I did.

Q. Well, we will come to that.

Did you tell Dave Greenglass that you had a friend by the name of Joel Barr who was engaged in espionage work with you?

A. Never told him that.

Q. Did you tell Dave Greenglass that Joel Barr left this country sometime in '47 to study music in Belgium?

[fol. 1646] A. Well, Mr. Bloch, before Joel Barr left this country he was at my shop and he told both Davey and me that he was going overseas. He told everybody present there.

Q. How long have you known Joel Barr?

A. I knew Joel Barr since college days.

Q. Since when?

A. College days.

Q. Was he a classmate of yours?

A. Yes, he was.

Q. And after Joel Barr and you were graduated from college, did you continue a friendship with Joel Barr?

A. Yes, I did.

[fol. 1647] Did he come to visit you in your home?

A. Occasionally he did.

Q. Did you visit him at his home?

A. Yes, I did.

Q. Where did Joel Barr live?

A. Well, at the time I visited his home he lived uptown, Manhattan, on 97th Street, on the west side.

Q. Did Joel Barr ever live in Greenwich Village?

A. Yes, he did.

Q. Did you ever visit him when he lived in an apartment in Greenwich Village?

A. Yes, I did.

Q. Now, did there come a time when Joel Barr came around to your shop to do some work at your shop? When I say your shop I am referring now to the Pitt Machine Products Company.

A. Yes, there did come a time.

Q. What kind of work did he do?

A. Well, he was building an amplifier for himself.

Q. When you say an amplifier, for what kind of an instrument?

A. For a record player.

Q. Was Joel Barr a musician?

A. He wasn't a musician, but he was interested in composing.

Q. And when you visited Joel Barr at his home, did Joel Barr usually play the piano or play phonograph records or have soires where music was played?

A. Right; he had musicals.

[fol. 1648] Q. He liked music?

A. That is correct.

Q. Did there come a time when Joel Barr told you in Dave's presence that he was going to Europe to study music?

A. That is correct.

Q. Can you tell us, to the best of your recollection about when that was?

A. I would place it approximately the end of '47 or the early part of '48.

Q. Did you subsequently find out that Joel Barr did go over to Europe?

A. Yes, I did.

Q. From whom did you get that information?

A. Well, I had business dealings with the Barco press. The firm is owned by Joel's older brother; and his other brother, his younger brother, worked at the place.

Q. What are the names of Joel Barr's brothers?

A. I only know the first name of the younger brother. His name is——

Q. What is his name?

A. —Arthur Barr.

Q. All right, did you see Arthur Barr?

A. Yes.

Q. After 1948?

A. Yes, I did.

Q. Did he tell you where Joel was?

A. He did.

Q. What did he tell you?

A. Well, when I saw Arthur Barr, I was at his place of business to install a machine I had made for them, for the Barco Press.

Q. Is that in connection with the Pitt Machine business?

A. That is correct; and on that occasion he told me [fol. 1649] that Joel was in Europe. I don't recall exactly where he was at the time but at one time he mentioned to me that he was—I don't remember the exact country; I think it was Sweden.

Mr. Saypol: Maybe we can have the brother here. I will object to the hearsay. I have been very liberal here and haven't objected.

The Court: Have you about finished with that?

Mr. E. H. Bloch: All right, Mr. Saypol.

Q. At any rate, were you informed by Joel's brother that Joel was in Europe?

A. That's right.

Mr. E. H. Bloch: Just this last question, Mr. Saypol.

Mr. Saypol: Still hearsay, if the Court please.

Mr. E. H. Bloch: All right, I will withdraw it.

Will you bear with me for one second, your Honor? I am just trying to decipher my notes.

Q. Now, there has been testimony here by the Greenglasses that somewhere around 1950, in connection with your telling Dave Greenglass to leave the country, that you told him that Harry Gold was Fuchs' contact in the United States, and since Greenglass had direct contact with Gold that eventually—and this is paraphrased—the trail may lead to Dave Greenglass and he ought to leave the country. Did you ever say anything like that, in those words or [fol. 1650] in substance?

A. I did not.

Q. Do you remember whether you were in the house of the Greenglasses in February 1950?

A. I don't remember.

Q. When did Dave Greenglass——

Mr. E. H. Bloch: Before I ask that, I wonder whether the Government will, within the next few minutes, get me the records of the Pitt Machine Products Company.

Mr. Kilsheimer: Do you want everything?

Mr. E. H. Bloch: I think so. I mean you know, what you had here the other day, the stock books.

Mr. Cohn: We will bring the whole thing.

The Court: Are you leaving this subject now?

Mr. E. H. Bloch: I think I can cover a few moments of it before we come to any documentary material, your Honor.

Q. Did there come a time when Dave Greenglass left the Pitt Machine Products Company?

The Court: Before you answer that question:

By The Court:

Q. Did you have any discussion with Greenglass about his going to Mexico?

A. I didn't have any discussion with Greenglass about going to Mexico, but at one time the word Mexico was mentioned. If you want me to discuss that——

[fol. 1651] Q. When?

A. —incident now.

Q. Just tell me when.

A. In the middle of May.

Q. In the middle of May?

A. Right.
Q. Tell us how that came about.

Mr. E. H. Bloch: Just pardon me, if the Court please. I know that the Court's question is absolutely proper and relevant. What I was doing here is going along chronologically. There were some meetings between Greenglass and this witness prior to this incident, and I think the incident——

The Court: I thought you had touched on it.

Mr. E. H. Bloch: No. You see what I did, I went to February 1950. Now I am going to try to go into the business relationships of the parties at that time, because chronologically it fits in.

The Court: Go ahead.

Mr. E. H. Bloch: I hope the Court will bear with me. I am going to get to that. I am going to cover every possible incident that I can.

The Court: All right.

By Mr. E. H. Bloch:

Q. Now, did there come a time when Dave Greenglass left the Pitt Machine Company?
A. Yes, there did.
[fol. 1652] Q. And what year was that?
A. In 1949.
Q. And during that year were you or Dave Greenglass or Bernie Greenglass drawing your regular drawings from the Pitt Machine Products Company?
A. No, we were not.
Q. Was business bad?
A. It was bad.
Q. Was it very bad that year?
A. Very bad.
Q. Did there finally come a time when Dave Greenglass told you he can't make a living, he has to get out?
A. Right.
Q. And did he go out?
A. He did go out.
Q. And is it also true that Bernie Greenglass a few weeks later also got out of the business?

A. Yes.

Q. Did you remain in the business?

A. I did.

Q. Was Dave Schein whom you have talked about yesterday still interested in Pitt Machine Products Company when Davey left the business?

A. Yes, he was.

Q. And was the stock ownership of the Pitt Machine Products Company the same in the latter part of 1949 when Dave left the business or August 1949 when he left the business as when had originally incorporated and the stock was allotted to the various stockholders?

A. It was the same.

Q. Now, did you have any conversation with Dave about the disposition of his stock?

A. I had many conversations about the disposition of his stock.

[fol. 1653] Q. I want you to tell us when these conversations about his stock started?

The Court: Well, I tell you, you are going awfully far afield. You brought this out from Greenglass on cross-examination as I remember, and without having all the discussion, I think the purpose is known to me, what you are trying to get at. Why don't you get to the main point? I don't want all the discussion and so forth, and so forth, about Pitt Products.

Mr. E. H. Bloch: The difficulty here is, your Honor, that the discussions about the stock are so interrelated with the main substance——

The Court: All right. He had discussions over a period of time. He can say what they related to. I am going to let him characterize it.

By Mr. E. H. Bloch:

Q. I am going to ask you some general questions and we are going to cover this very quickly.

Were you negotiating to get an assignment of Dave Greenglass' stock in 1949 after he left?

A. Yes, I was.

Q. And did there come a time when in the latter part of 1950 when there was an assignment written out for him to sign whereby he was going to assign that stock to you?

A. Yes, there was.

[fol. 1654] Q. And was there a discussion about price?

A. There certainly was.

Q. Could you agree with him about price?

A. No, we couldn't.

Q. Did you finally agree with him about at least the amount that he was to get?

A. That is right.

Q. And was there left in abeyance how that amount was to be paid?

A. That is correct.

Q. Did you get a written assignment and delivery, a written assignment of the stock by Dave and a delivery of that stock in January 1945?

A. No, I did not.

Q. I am sorry, January 1950?

A. No, I did not get it at that time.

Q. And did you continue to have discussions with him about that right from January 1950 up to May 1950?

A. I had continuous discussions with him.

Q. Did you finally agree with him on a price of $1000?

A. Yes, I did.

Q. And is it fair to say that you didn't want to give him the $1000. in cash or give him a promissory note for that $1000. or agree to bind yourself in specific installments to pay up that $1000., and both Dave and Ruthie insisted on either getting cash or getting a note or getting some written evidence of the indebtedness?

A. That is correct.

[fol. 1655] Q. From you, is that correct?

A. Yes.

Q. Does that bring us up to about May 1, 1950?

A. That is right.

Q. Now, in or about May 1, 1950 did you finally get a delivery of Dave Greenglass' common stock in Pitt Machine Products Company together with his written assignment on the reverse side of the certificate?

A. I did get that.

Q. You didn't see that, but that has been introduced in evidence.

Mr. E. H. Bloch: Your Honor, I assume the jury will understand.

May I just make a statement to the jury that I am referring now to the certificate of stock which was issued to Dave Greenglass and which was subsequently endorsed by——

Mr. Saypol: Just a moment. That is not in evidence I am told.

The Court: It is not in evidence?

Mr. Saypol: No.

Mr. E. H. Bloch: No, Mr. Saypol, I think you are mistaken. There isn't in evidence his resignation but I think the stock was admitted in evidence.

The Court: It was marked for identification.

[fol. 1656] Mr. E. H. Bloch: Then I beg your pardon.

By Mr. E. H. Bloch:

Q. Well, at any rate Government's Exhibit——

Mr. Saypol: No "at any rate." I would rather——

Mr. E. H. Bloch: We have it here.

Mr. Saypol: I would rather not have counsel's explanatory statements to the jury.

The Court: I gave him permission to do that.

Mr. Saypol: Oh, I beg your pardon. I didn't know that.

By Mr. E. H. Bloch:

Q. At any rate, I show you Defendant's Exhibit C for identification and ask you to look at it and after looking at it tell us whether there came a time when you actually got delivery and that assignment of the stock from Dave Greenglass?

A. There did come a time.

Q. When was it?

A. A day or so before the beginning of May.

Q. And at that time did you also procure from him——

Mr. E. H. Bloch: If the Court please, may I offer the certificate in evidence now? I understand that it is really cumulative.

The Court: Go ahead.

Mr. Saypol: It is irrelevant, if the Court please.

[fol. 1657] The Court: Well, all right.

Mr. E. H. Bloch: I will tie it up, Mr. Saypol.

The Court: You may offer it. You are taking a very ponderous route again. I thought you were beginning to clean it up with that question and I was going to commend you for getting to this subject. I would rather get back to the main topic.

Mr. E. H. Bloch: I am leading right into it now, your Honor, these conversations in May. All that is necessary is certificate No. 2.

(Addressing clerk)

(Marked Defendants' Exhibit C-1 in evidence.)

[fol. 1658] Mr. E. H. Bloch: I would like to ask a question, your Honor, but I know Mr. Saypol might object, and I am trying to speed it up. I will ask the question.

The Court: This is the first time I ever heard a lawyer worry about asking a question before asking it.

By Mr. E. H. Bloch:

Q. Did you have heated discussions with both Dave and Ruth Greenglass about the transference of this stock?

A. I did.

The Court: You see, he didn't object.

Mr. E. H. Bloch: I am surprised.

Q. I show you Defendants' Exhibit D for identification, and ask you whether you received that paper from Dave Greenglass at the time you received an assignment and delivery of his stock?

A. I did not.

Q. How long after you received the assignment of the stock did you receive this resignation which has been marked Defendants' Exhibit D for identification?

A. I can't tell exactly the number of days but it was a number of days after I made the arrangement with David Schein to buy his share of the stock.

Q. Now, did you on May 1, 1950, contract to purchase the stock of Schein in Pitt Products Machine Company?

A. Yes, I did.

[fol. 1659] Q. And did you pay Schein $1,000. in check or certified check that day as a deposit for the purchase of that stock?

A. I did.

Q. Did you agree to pay a total of $5500. for that stock?

A. That is correct.

Q. And is it accurate to say that the $4500. balance was to be paid off by you in instalments of $160. a month?

A. That is correct.

Q. And was your obligation that you were assuming to David Schein one of the reasons why——

Mr. E. H. Bloch: Withdrawn.

Q. Did you tell Dave during this period that one of the reasons you did not want to give him cash and could not afford to give him cash was because you had to pay off Schein and had to give him some money on account?

A. That is correct.

Q. As a matter of fact, did you have any cash of any substantial amount left in your bank account after you paid Schein $1,000 on account of his stock?

A. I did not.

Q. Did you come around to Dave's house in order to try to get an assignment of that stock?

A. Yes, I did.

Q. And did you come around to Dave's house for the purpose of getting that resignation?

A. I did.

Q. As an officer and director of the corporation?

A. I did.

[fol. 1660] Q. Was this in May 1950?

A. I believe that is when it was.

Q. Now, did you see Dave later that month?

A. Yes, I did.

Q. Tell us the circumstances.

A. Well, about the middle of May, I can't tell the exact date, David came to my shop one morning. He came into my office. I was sitting in my office, and he said, "Come on outside, I want to talk to you."

I said, "Look, Dave, I got to conduct my business. Let us talk here."

He said, "No, it is important. Let us go outside."

Well, I walked outside of the shop with him.

He said, "Let us walk into the park."

Q. Now, when you say park, to what park are you referring?

A. Well, right opposite my shop on Houston Street is the Hamilton Fish Park, and in order to enter the park on the Pitt Street side, the direction we were headed for, we walked across Houston Street, down the street, made a left turn and walked a quarter of a block and walked into the park.

Q. Tell us about the conversation you had.

A. Dave said to me as follows: "Julie, you got to get me $2,000. I need it at once."

[fol. 1661] I said, "Look, Dave, you know the arrangements I made with you. I obligated myself to Dave Schein. I gave him a down payment of $1,000. I have no cash left. You can't get blood out of a stone. I just don't have the money. What do you want it for?"

He said, "I need the money. Don't ask me questions."

I said, "Dave, you are getting very excited. What is the matter with you?"

Q. Was he excited?

A. He was very excited. So he said, "Well, if you can't help me like that maybe you can do something else for me."

I said, "What is it? If I can help you I will."

He said, "Will you go to your doctor and ask him if he would make out a certificate for a smallpox vaccination?"

I said, "Why don't you go to your doctor?"

He said, "Don't ask me that. I can't do it."

Q. Was Ruthie present at this time?

A. No, she was not. And I said, "It is highly irregular, but I will ask my doctor if he will do that."

And he said, "Don't tell him who it is for, and also, incidentally, while you are talking to him, ask him if he knows what kind of injections are required to go into Mexico."

[fol. 1662] I said, "Dave, are you in trouble or something?"

He said, "Don't ask me anything about it. You got to do this for me. If you can't give me the money I need, at least do this for me."

By The Court:

Q. Now, up to that time you had been having some heated arguments, as you call it, heated arguments with David, and I take it you were not particularly friendly with him then, were you?

A. Well, I would say this: that I was not antagonistic to him. He was my wife's brother.

Q. But you were not friendly. That friendship had been strained?

A. Yes, there was strain.

Q. Can you think of any reason why on this occasion he would come to you and confess to you and ask you to help him out instead of going to somebody else?

A. I have no idea why he came to me.

By Mr. E. H. Bloch:

Q. But he did come to you?

A. He came to me.

Q. As a matter of fact, as a result of that conversation did you call Dr. Bernhardt?

A. Yes, I did call Dr. Bernhardt.

Q. Now, I want you to tell this Court and jury——

[fols. 1663-1664] By The Court:

Q. You say you didn't press him for information about Mexico?

A. I pressed him but he wouldn't give me any and he was very disturbed and agitated.

Q. Did you call his wife to try to find out what was wrong?

A. No, I didn't call his wife because his wife had been sick with burns. I don't know if she was aware of his trouble.

Q. You didn't attempt to ascertain from any other source or have anybody else like your wife talk to her brother to find out what was wrong?

A. Well, that night when I came home I told my wife about the incident and my wife told me, "What is the matter? Is Ruthie nagging Dave again for money?"

I said, "No, it doesn't seem to be that. He must be in some trouble. I don't know what it is."

And I recall at that time in my mind the incident—the instant he told me what happened to him in February when the FBI had come around to visit him and question him about some uranium. I thought maybe it had something to do with that or had something to do with a conversation Ruthie had with me many years back.

Q. Well, up to that time had your friend, Mr. Sobell, told you that he was contemplating going to Mexico?

A. No, sir.

[fol. 1665] Q. How long prior to May, the latter part of May of 1950 had you been getting injections from Dr. Bernhardt?

A. Well, the injections started in early March.

Q. Tell us what you said to Dr. Bernhardt and what Dr. Bernhardt said to you when you called him up?

A. Well, we had regular appointments for Tuesday or Thursday of the week. In order to ascertain that the doctor would be home at night and not out on a call I would call him. So I called him that night and said, "Can I come over, Dr. Bernhardt?"

He said, "Yes, the other patients are going to be over tonight."

Q. And did you go over to Dr. Bernhardt's office that night?

A. Not his office; his home.

[fol. 1666] Q. I mean his home, I am sorry. Now, I want to ask you this question: Did you have any telephone conversation with Dr. Bernhardt in which this whole question of innoculation for Mexico, as testified to by Dr. Bernhardt took place?

A. No, I didn't have any telephone conversation with him.

Q. Did you go over to his home later?

A. Yes, I did.

Q. Who was there when you got there?

A. Well, there were other patients present, who had preceded me in his house.

Q. Can you mention one of the other patients?

A. That was a patient by the name of Schreier.

Q. And does Mr. Schreier live in Knickerbocker Village?

A. Yes, he does.

Q. Now, what room in Dr. Bernhardt's home did you come into that evening?

A. Well, it is a living room.

Q. And is that the same room that you had come in from March on, to get your injections?

A. That is correct.

Q. Incidentally, had you also been treated by Dr. Bernhardt for some flu or strep throat that you had earlier that year?

A. That is right; on two occasions.

Q. At any rate, on this night Mr. Schreier was there?

A. Right.

Q. Were there any other people there besides Mr. [fol. 1667] Schreier and the doctor?

A. There was someone else present, but he left very early. I don't remember the person's name.

Q. Do you know whether Mr. Schreier also gets hay fever injections?

A. He does.

Q. Now, when you got there, did you get your hay fever injection?

A. That is correct.

Q. What was the practice when you got your hay fever injection, in connection with Dr. Bernhardt, in terms of how long you stayed there after you got your injection?

A. The patient would have to wait for a half hour to three-quarters of an hour to see if he had a reaction to the injection.

The Court: What has that got to do with this thing?

Mr. E. H. Bloch: I am coming to it.

Q. Now, does that refresh your recollection about a conversation that you had with Dr. Bernhardt about Mexico?

A. Yes, it does.

Q. Tell us how that happened.

A. Well, when I was in the house there, Mr. Schreier and Dr. Bernhardt were talking about vacations in general, and they were discussing a vacation the doctor had had on previous years at Cape Cod, and they had a large photographic album out, and they were looking at the pictures and they passed them to me and we all discussed it; and

[fol. 1668] we discussed other vacation spots, Miami, the mountains.

The Court: I still ask what this has to do with the case?

Mr. E. H. Bloch: I am trying to get him to come to the conversation I think the Court wants.

A. (Continuing) Then I asked Dr. Bernhardt about vacations in Mexico, what are the requirements? And he told me that you need to have a smallpox injection. Well, I asked him would he make out a certificate for a smallpox injection for somebody he didn't vaccinate. He said, No, he would not. I didn't discuss the matter with him any further, but he did give me some detailed understanding of what a person would have to be injected for if he wanted to go to Mexico.

Q. Now, just two questions in connection with that: At the time the doctor told you that was Mr. Schreier present?

A. No, he was not; he had left already.

Q. Next question: Did you ask the Doctor about Mexico because of the conversation that you had had with David earlier?

A. Yes, I did.

Q. But you didn't tell it to the doctor?

A. Tell the doctor what?

Q. That it was a friend of yours who was contemplating or a relative, who was contemplating going to Mexico?

[fol. 1669] A. I didn't tell him "a relative." I just told him "a person."

Q. Well, you said you had been discussing vacation spots, and then you asked him about Mexico.

A. That's right.

Q. Was that done to make him believe you were contemplating going to Mexico?

A. No, because he asked me, when I asked him about the vaccination, if it was for me, and I said, "You know, Doc, it is not for me. I have been vaccinated a few years ago," when they had that big vaccination drive.

Q. Now, there has been testimony here by Dave Greenglass and Ruth Greenglass that on May 23rd or May 24th, 1950, you came over to their house and you showed them, one morning—I think they said early morning, the 24th

of May—and you came in with a copy of the Herald Tribune and you showed them a photograph of Harry Gold; did any such incident take place?

A. No, it did not.

Q. They also testified that at or about that time you told Dave that he ought to get out of the country and you gave him $1,000. in cash; did you ever give him that money?

A. I didn't give that money.

By The Court:

Q. Nor did you give him the $4,000. as he testified?

[fol. 1670] A. No, I did not, sir.

By Mr. Bloch:

Q. As a matter of fact, did you have in cash, or in your checking account, a thousand dollars?

A. At what time?

Q. The latter part of May?

A. No, I don't believe so. Later on I had some money in my checking account.

Q. Did you have some bonds of the United States Government at that time?

A. Yes, I did.

Q. Do you remember when you cashed some of those bonds?

A. I know it was sometime after I made the agreement with Dave Schein, because I cashed those bonds to have the payments in the bank available to him.

Q. When you cashed those bonds from the United States Government, whether it was in May or it was in June, did you deposit the proceeds that you had obtained as a result of the sale of those bonds in your bank account?

A. Yes, I did.

Q. Did you draw any checks from your bank account, in any large denominations, outside of the $1,000. check to Dave Schein, in the months of May or June, 1950?

A. I did not.

By The Court:

Q. Well, Mr. Rosenberg, if it was the purpose that Mr. Greenglass had testified it was for, then it would be fair

[fol. 1671] to suppose that the money would never come out of a bank account; isn't that so?

A. Well, it is not for me to say, sir.

The Court: All right.

By Mr. Bloch:

Q. Well, did you, at any time, get any money from anybody, in these denominations of a thousand and $4,000.?

A. No, I did not.

Q. Did you ever see $4,000. at one time?

A. No, I didn't.

Q. In your life?

A. No.

Q. Now, after you saw the doctor——

The Court: You say you have never seen $4,000.?

The Witness: Not in one lump sum.

The Court: Oh, I see.

Q. Did you see Dave Greenglass a few days after you had spoken to the doctor about the Mexican vaccination?

A. Yes, I did.

Q. Tell us the circumstances of that.

A. Well, I don't re— a couple of days after that, on my way to work, I stopped in and told him the doctor had said he wouldn't give him the vaccination, the vaccination certificate, and he said he would take care of it himself. That is all that happened at that time.

Q. Now, where did this conversation take place?

[fol. 1672] A. It took place in his house.

Q. Was Ruthie there?

A. I don't remember.

Q. Did you have any further conversations with Dave Greenglass after you told him that the doctor, your doctor, would not give a phony certificate?

A. Yes, I did.

Q. Tell us about those and try to fix the time.

A. Well, I don't know exactly how many days after that first walk we had in the park it was, but it may have been a week or ten days or 15 days, I don't recall exactly how many, when I received a call from David Greenglass and he said "It is important. I would like to see you. Come over."

Q. Where did you get that call?
A. I got that call at my shop.
Q. When you say a call, do you mean a telephone call?
A. Telephone call, right.
Q. All right.
A. And he said, "Come over, I want to see you."
Q. Just one question: How far was 265 Stanton Street, where Dave and—
Mr. A. Bloch: 265 Rivington Street.
Q. 265 Rivington Street, where Dave and Ruthie lived at that time, from your shop at 267 East Houston Street?
A. I would say about three or four blocks.
Q. Now, did you go over there in response to that call?
[fol. 1673] A. Well, a couple of nights later on, I don't remember exactly whether it was one night, two nights or three nights, after supper one — I went over to his house.

Mr. Saypol: I would like to have the time fixed, if I may, please.

A. (Continuing) It was in the evening.

The Court: Will you fix the time?
Mr. Saypol: Will you be good enough to have him fix the time?
Mr. E. H. Bloch: I am sorry.

Q. Can you fix the time with more precision than you have up to now? You said, I think, a couple of days, a week, or even 15 days later.
The Court: Later than what, later than the first conversation?
The Witness: Yes.
The Court: And they talked about——
The Witness: The middle of May.
Mr. E. H. Bloch: When he told him that the doctor would not give him a phony certificate.
The Witness: I would say it was near the end of May then.

By The Court:

Q. Well, now, during that period of about two weeks, what did you do to try to find out what trouble David [fol. 1674] Greenglass was in?

A. I didn't do anything.

Q. You didn't press him or didn't have anybody try to find out?

A. No, I didn't press him.

By Mr. E. H. Bloch:

Q. Did you discuss it with your wife?

A. Yes, I did.

Q. Did you describe already what you said to your wife?

A. I did.

The Court: Is that all you did?

The Witness: That's right.

A. (Continuing) Then I went over that evening to his house and I knocked on the door and Dave pushed himself out of the house, and he pulled me inside and said, "Julie, I can't talk to you now. I have got some company here." He says, "Either I will get in touch with you or you will get in touch with me and we will get in touch with each other that way."

Q. Did you ever go into his house after that night?

A. No, he didn't want to let me in his house that evening.

Q. Is that the entire incident of that evening?

A. That was the entire incident.

Q. Did you go home after that incident?

A. I went directly home.

Q. Did you speak it over with Ethel?

A. Yes, I did.

[fol. 1675] Q. What did you tell her? What did she say?

A. I told Ethel, that "your brother is in some trouble; he is acting peculiar and strange and I don't know what to do about it; and you know that he has had it in for me and our relations haven't been the best"; and she prevailed upon me to see if we can do something to help him out, if he needs some help.

By The Court:

Q. You mean, you acknowledged the fact that you had not been friendly?

A. No, of course.

Q. And despite that fact, when Greenglass came to you for help, you didn't say to him, "Why come to me? We

haven't been friendly. Go to some other relative or to some other member of the family"?

A. Well, we weren't at each other's throat. He was my wife's brother.

Q. In other words, there hadn't been such a wide rift as yet?

A. No, there hadn't been.

By Mr. E. H. Bloch:

Q. Now, after you conversed with your wife about this incident, where he wouldn't let you in the house, did you see him again?

A. Yes, I saw him again.

Q. How did that come about?

A. Well——

Q. Mr. Rosenberg, I am sorry to interrupt.

A. He called me——

[fol. 1676] Q. Wait. Will you keep your voice up?

A. Yes, I will.

He called me at the shop and told me——

Mr. Saypol: I would like to have dates fixed, if possible.

Q. Try to fix the date.

A. Well, it was a number of days after the time I went to his house.

Q. Would you say this was still in May, or would you say this was already in June?

A. It might have been the first week in June or the end of May.

Q. You are not sure?

A. I can't fix it exactly, if it was a day or two in June or a day or two in May.

[fol. 1677] Q. Is that the best you can fix the time?

A. That is the best I can recollect.

Q. All right, now tell us.

A. He called me up and said that "It's very urgent, I have got to see you. Can you come over to my house?" And I told him I couldn't do it right then but if I have a chance, maybe the next morning on my way to work I will drop in to see him, and a day or two after that—I don't remember if it was the next day or the day after, I dropped

in at his house. I walked up—I walked up to his floor and knocked on the door, and when I came in he was already up. He did not have his shirt on, he hadn't washed and he did not have any breakfast, and he says "I will just put my shirt on and we will go downstairs without having any breakfast."

Q. Was Ruthie there?

A. Yes, Ruth was there.

Q. Can you fix the time of the morning it was?

A. Well, I would say it was somewhere about 8 o'clock because that is about the time I would get towards the shop.

Q. Now did you have any conversation with Dave and Ruthie in the house?

A. No, we did not.

David wanted us to go right out of the house.

Q. Did Ruthie say anything to you?

A. She said "Don't be too long."

[fol. 1678] Q. Did you notice anything about Ruth's reception of you in terms of coolness or warmth?

A. Well, she was cool.

Q. How about Davey?

A. Dave was very excited. He was pale and he had a haggered look on his face.

Q. Now, at that time did Ruthie already give birth to a child?

A. Yes, I believe she did.

Q. Did you see the child?

A. I glanced at the child.

Q. Did you then go out of the house with Davey?

A. I did.

Q. Tell us what happened?

A. Well, Davey directed us towards the drive, the East River Drive. He didn't take a direct route. He went at a diagonal method. In other words, instead of going down Rivington Street he—I believe we turned the corner—I don't remember the exact route but I think we were going up Columbia Street and as we were walking up the street he noticed some friends of his across the street and he said "Walk on ahead slowly, Julie and I'll—I want to talk to these people for a minute and I'll catch up."

About a half block later he caught up and we proceeded

toward the East River Drive. I said to Dave at this point "You look very agitated. Calm yourself, take it [fol. 1679] easy. What's troubling you"? And he said "Julie, I am in a terrible jam." I says "No— I says "I realize you have been asking me for money, you have been telling me to go to my doctor for a certificate, you have been talking about Mexico. What is the trouble, Dave?"

He said "I can't tell you everything about it. All I want you to do for me, Julie, is I must have a couple of thousand dollars in cash." I says "David, I don't have the money on me, I can't raise that kind of money."

He says, "Julie, can you borrow it from your relatives?"

I says, "No, Dave, I can't do that."

He says, "Can you take it from the business for me?"

I says, "Dave, I cannot do that."

"Well, Julie, I just got to have that money and if you don't get me that money you are going to be sorry."

I said, "Look here, Dave, what are you trying to do, threaten me or blackmail me?"

Well, he was very excitable at this time, he was puffing and I saw a wild look in his eyes, and I realized it was time to cut this conversation short. We had been walking down the Drive near about Houston or Stanton Street and I [fol. 1680] says, "Look, Dave, you go home, take a cold shower, I have some work to do, I am going to the shop; good-bye," and I left him at that time, and I made up my mind at that point that I wouldn't have anything to do with him, and I was very agitated.

Q. Did you give him any money?

A. I did not give him any money.

Q. Did you give him any money at any time?

A. No, I didn't.

Q. Did you tell your wife Ethel about this little walk that you had with him?

A. Yes. When I came home that night I told my wife about it. She was terribly upset. She says "Let's call Ruthie, let's talk to her."

So I said to her "Well, I don't know; you know, Ruthie just came home from the hospital. She has those burns, they are festering. She has a child and I do not even know if Davey is home. Maybe Ruth doesn't even know about

this trouble. What are you bothering her for anyway? What are you bothering her for? Anyway, he has always had it in for me." And she said "Yes, he is my kid brother, and the least I can do is help in time of need."

And I said, "Well, Ethel, I don't think we should bother." [fol. 1681] Well, my wife prevailed upon me and I said "Well, I will see if we can do something to help." And she wanted to make arrangements the next morning to go down to see David, to get a sitter for the children who were going to school. I says, "Look, Ethel, I am near Dave's house; perhaps I will drop in on them and take a look at him and see if he doesn't do anything rash, and that's all, and I won't even talk to him about it."

Well, I didn't have a chance to go over the next day—it must have been a day or two after, I dropped in on the Greenglasses and they just got up that morning and I remember sitting down at the Kitchen table and Ruthie said, "Hello" to me and I looked at the baby—I went into the bedroom and looked at the baby, and I noticed everybody was cool to me and I didn't want to bring the subject up in Ruthie's presence—I did not even know if she was aware of Davey's trouble, I did not want to aggravate her. I saw that Davey was calmer at this point and wasn't going to do anything rash so I picked myself up after a few minutes and I left the apartment.

The Court: Hold it——

Q. Is that the entire incident?

A. That is the last time that I saw Dave Greenglass.

[fol. 1682] Q. Until you met him in the Federal House of Detention?

A. That is right.

The Court: And you can't think of any reason whatsoever, can you, why Dave Greenglass would, of all the people he knew, his brother, all the other members of his family, single you out, as he did apparently and as you say he did, and say that you would be sorry unless you gave him the money?

The Witness: Well, he knew that I owed—he had an idea that I owed him money from the business, and I guess that is what he figured he wanted to get the money from me.

Q. Do you know whether Dave ever went to any of his other relatives to ask them for money?

A. No, I do not know that.

The Court: And you do not know of any other relative of Dave's, outside of you and his sister, who have been indicted, in connection with this case?

The Witness: No, I do not know of any other relatives.

The Court: We will recess now until 2.20.

(Recess to 2.20 P. M.)

[fol. 1683] AFTERNOON SESSION

JULIUS ROSENBERG, resumed.

Direct-examination (Continued).

By Mr. E. H. Bloch:

Q. Now Mr. Rosenberg, there has been testimony here from Dave Greenglass to the effect that on one of the walks you had with him and I believe it was the walk in the early part of June 1950, you told him to memorize certain signals or identification matter with respect to going to Mexico and appearing in front of a statue with a book, and going to some European country and also appearing before a statue with certain books in his hand.

Do you remember that testimony?

A. Yes, I recall it.

Q. Did any such conversation take place in the early part of June 1950 between you and Dave Greenglass?

A. No, it did not.

Q. Or at any other time?

A. No, we didin't have any such conversation.

Q. Now, did you ever authorize Dave Greenglass or have any discussion with Dave Greenglass whereby your name Julius or any other identification which might resemble your name could be transmitted or conveyed to anybody?

A. No, I did not.

[fol. 1684] Q. When was the first time that you heard that out in Albuquerque, New Mexico, on June 3, 1945 Gold came in and said "Julius sent me," or something like that?

A. The first time I heard that was when Harry Gold testified on this stand here.

Q. Now, I want to come down to certain testimony of both Dave and Ruth Greenglass. I think both of them testified in substance that you said to them that you had received a citation from the Russian government for services rendered. Did you ever make any such statement to them?

A. No, I did not make any such statement.

Q. Or to anybody?

A. No, I didn't make any such statement to anybody.

Q. Did you ever get a citation or a certificate or any document or any oral congratulations from the Russian government or any agent of the Russian government or any citizen of the Russian government for services that you had rendered on behalf of the Russian government?

A. I got nothing of the sort.

Q. Did you ever render any services for the Russian government?

A. I did not.

Q. Now then, there was testimony here that you said to Dave and Ruth Greenglass at one of the meetings you had with them, and I think it was sometime between 1946 [fol. 1685] and 1949 that you had received a watch from the Russian government. Do you remember that testimony?

A. I remember that testimony.

Q. Did you ever make any such statement?

A. I did not.

Q. Did you ever receive a watch from the Russian government or anybody authorized by the Russian government or any agent or representative of the Russian government, or any Russian?

A. I didn't receive any watch from any Russian or anybody.

Q. And there was also testimony that your wife Ethel—now, before we come to Ethel's watch: Did you have watches in your home?

A. Yes, I did.

Q. Do you know now that the FBI representatives at the time they searched your home took some of those watches?

A. Yes, they took them all.

Q. Can you identify every watch that was taken from your home by the FBI?

A. Yes, I can.

Q. And explain to the Court and jury just where each watch came from?

A. Yes, I can.

Q. Now——

Mr. E. H. Bloch: Now, I don't know whether this is the proper time to ask the Government to produce those watches.

The Court: Did you ask Mr. Saypol before?

[fol. 1686] Mr. E. H. Bloch: I did not, your Honor. This is the first time.

Are they available? If not, I can wait and come back to it.

Mr. Saypol: We will get them very quickly, whatever there is. 3 o'clock?

The Court: Well, you go ahead with your examination.

Mr. E. H. Bloch: All right.

The Court: Do you need the watches?

Mr. E. H. Bloch: That is what I was going to ask the Court.

The Court: You have a denial.

Mr. E. H. Bloch: All right, if you think that is sufficient. I also was wondering whether the Government at sometime before the defense rests would produce in court what material was removed by the Government agents from the Rosenberg home at the time they searched it. I don't know just what they took.

All right.

[fol. 1687] Q. Now, there has been testimony here——

The Court: Of course you shouldn't make the request that way. You could have talked to Mr. Saypol about that before and have an understanding about what should be produced and what shouldn't be produced.

Mr. E. H. Bloch: Well, I agree with your Honor there, but I had a lot of subjects here that I am covering seriatim and it slipped my mind.

Q. Now, Mr. Rosenberg, there has been testimony——

Mr. Saypol: Wait a minute, Mr. Bloch. The reason I made no point of it is because of my view as to its lack of importance. However, with respect to the watches, does counsel desire those now? Are there watches or a watch?

Mr. Norton: No, there are watches.

The Court: He said he doesn't want them.

Mr. Saypol: Forget about them.

Mr. E. H. Bloch: I say, at any time before the defendants rest.

The Court: We are talking about the watches now. You made another request for papers.

Mr. Saypol: Supposing the matter be left in abeyance until the recess, and then counsel can address himself to me.

Mr. E. H. Bloch: All right.

[fol. 1688] Q. Now, there has been testimony here from Dave Greenglass, and I believe also from Ruth Greenglass to the effect that you said to them that your wife Ethel also got a watch from the Soviet Union for services rendered, or substantively something like that; did you ever make such a statement?

A. I didn't make such a statement.

Q. Did Ethel make such a statement?

A. No, she did not.

Q. Did your wife Ethel have a watch?

A. Yes, she did.

Q. How did she come to have the watch?

A. I bought it for her.

Q. When did you buy it?

A. I bought it for her sometime before her birthday, in 1945.

Q. Where were you working at the time?

A. At Emerson Radio.

Q. How much did you pay for that watch?

A. I believe it was about $30.

Q. Did she have that watch from that time to the time of your arrest?

A. Yes, she did.

Q. Do you know whether your wife Ethel had any other watch outside of the watch that you bought for her?

A. I don't remember.

Q. Your wife Ethel would know better than you?
[fol. 1689] A. Yes.

Q. All right. Now then, Dave and Ruth Greenglass testified that you said to them that you received a console table from the Russian Government; do you remember that?

A. Yes, I heard that testimony.

Q. Did you ever make such a statement?

A. I did not.

Q. Did you ever receive a console table from the Russian government?

A. I did not.

Q. I think you have already testified that you purchased a console table from R. H. Macy?

A. That is correct.

Q. Now, can you be as specific as you possibly can about the date of that purchase?

A. Well, I can't remember exactly the date, but it was somewhere between 1944 and 1945 that I personally purchased the console table.

Q. How much did you say you paid for it?

A. Somewhere in the neighborhood of $21.

Q. Did you pay cash for it; was it a C. O. D. transaction?

A. I paid cash for it and I ordered it sent to my house. As a matter of fact, if I do recall, I believe I bought something else at that time.

Q. Now, did you get a bill for it?

A. Yes, I did.

Q. In whose name was the bill made out?

A. In my name.

[fol. 1690] Q. Julius Rosenberg?

A. That is correct.

Q. Was it subsequently delivered by R. H. Macy Company to your home at 10 Monroe Street?

A. It was.

Q. Do you know how long after you purchased that console table that it was delivered?

A. I can't remember; maybe a week or two weeks afterwards.

Q. Now, was the table that you purchased at Macy's the same console table that was in your home at the time the FBI finally came around to arrest you?

A. Yes, it was.

Q. Prior to your arrest in August—

Mr. A. Bloch: July.

Q. I mean in July, were you interrogated by the FBI?

A. Yes, once.

Q. When?

A. The morning after the FBI took David Greenglass in custody, they came to my house. There were three men.

Q. Do you recognize any of those men in court?

A. Yes, there was Mr. Norton (indicating).

Q. He is the gentleman sitting at the end of the table there?

A. Yes.

Mr. E. H. Bloch: Identifying Mr. Norton.

A. (Continuing) And a Mr. Harrington, and a third gentleman. I don't remember his name.

[fol. 1691] Q. I want you to tell the Court and jury, without my interspersing a lot of questions, just what happened on that day, when the FBI men came down to your home?

A. Well, they came down rather early, before we had finished dressing the children and getting them ready for school; I didn't have my shirt on, I remember, I didn't finish my shave yet, and there was a knock on the door. I opened the door. They said, "We are from the FBI. We would like to talk to you." I said, "Come in." I went into the bathroom with my wife and asked her, "Do you think I ought to talk to these gentlemen?" She said, "You know, if Davey is in some sort of trouble, if you can help my brother, talk to them; maybe you can be of some assistance to them."

I said, "I will talk to you gentlemen." And I finished dressing the children; my wife made some breakfast; I took my shave; and they looked around the apartment and said, "We can't talk here. Would you like to come down to our office and we will drop in and have a cup of coffee?" And I went with the gentlemen of the FBI, about 9 o'clock, I believe—we left the house a little before that—and we got into a car; we drove down to Foley Square here and they took me up to one of the 20th floors in this building.

[fol. 1692] Q. Now tell us what was said by the FBI agents to you and what you said to them, and how long you stayed there.

A. Well, there was a Mr. Norton in the room sitting at a desk with a pad in front of him, and Mr. Harrington sat on the other side of the table. I sat down on the front side of the table and another member of the FBI came in and sat behind, and they started asking questions about what I knew about David Greenglass. First they tried to get my background, what relations I had with him. I gave them my school background, work background and I told them whatever I knew about David Greenglass's education and his work background.

Q. Were you asked about your Government employment at that time?

A. No, they skipped over it.

Q. Did you tell them that you had formerly been employed by the Government of the United States?

A. Yes, I told them, and at that point they said to me—they questioned me and tried to focus my attention to, as I notice now, certain dates in the overt acts listed in this indictment. They asked me questions concerning when David Greenglass came in on furlough. I didn't remember. Then they said, was it in the winter or the summer? And they tried to keep bringing me around to the point where they could try to get me to state that I could remember specifically when. I couldn't recall all the events of his [fol. 1693] furlough. I helped them as much as I could in what I could remember. At one point in the discussion, I would say it was about two hours after I was there, they said to me, "Do you know that your brother-in-law said you told him to supply information for Russia?"

So I says, "That couldn't be so." So I said, "Where is David Greenglass?" I didn't know where he was because I knew he was taken in custody. They wouldn't tell me. I said, "Will you bring him here and let him tell me that to my face?" And they said, "What if we bring him here, what will you do?"

"I will call him a liar to his face because that is not so."

And I said, "Look, gentlemen, at first you asked me to come down and get some information concerning David

Greenglass. Now you are trying to implicate me in something. I would like to see a lawyer."

Well, at this point Mr. Norton said "Oh, we are not accusing you of anything. We are just trying to help you."

I said, "I would like to get in touch with the lawyer for the Federation of Architects and Engineers."

Q. Now when you said "the lawyer for the Federation of Architects and Engineers," were you referring to the [fol. 1694] lawyer who was the lawyer for that union when you were a member of that union?

A. That's correct.

Q. And are you referring specifically to any lawyer or are you referring to any specific lawyer?

A. Well, I had in mind a Mr.——

Mr. Saypol: May we have direct conversations and not conclusions?

The Witness: Well, this is conversation.

The Court: All right.

Q. All right, just tell us.

A. I finally remembered the name, Victor Rabinowitz, and I asked the FBI to please call him. Well, at this point Mr. Norton said, "Have a smoke, have a piece of gum. Would you like something to eat?" And the language he used in his actions were what the fellows at West Street would call conning——

Mr. Saypol: I object to that, if the Court please.

Mr. E. H. Bloch: I agree that it be stricken out.

The Court: Do you want to let it stand?

Mr. E. H. Bloch: No, I do not want to let it stand.

The Court: All right.

Mr. E. H. Bloch: I do not think it is important.

[fol. 1695] A. (Continued) And we discussed around the point.

Mr. Saypol: I ask that that be stricken.

Mr. E. H. Bloch: I did not hear that.

(Record read.)

Q. No; look, try to confine yourself to what actually was said.

A. I am sorry. Then Mr. Norton kept on going back to questions concerning ——

Mr. Saypol: I ask that the witness tell us what was said.

The Court: Frankly, I don't know what he is leading up to, but supposing we get the conversation, Mr. Bloch.

A. (Continuing) Mr. Norton asked me again, "Did you ask David Greenglass to turn over information for the Russians?" And I said, "No," I denied it. And then we discussed again what periods of time David Greenglass came in. I didn't recall too well and I kept on asking Mr. Norton, "I want to get in touch with my lawyer."

Finally, some time after lunch, it was probably between 12 and 1, my wife reached me at the FBI office and I told her that the FBI is making some foolish accusations, to please ——

Mr. Saypol: May that ——

Q. Never mind what you told your wife ——

Mr. Saypol: No, no, I do not mind what he told his [fol. 1696] wife but I mind his characterization about what the charges were.

The Court: Oh, now, wait a minute, Mr. Saypol; that objection doesn't mean anything. You are either going to object to what he told his wife if that is what he told his wife he has a right to repeat it here.

Mr. Saypol: I do not object to what he told his wife.

The Court: Then he can go right ahead.

Mr. Saypol: His characterization here.

The Court: That is what he told his wife. He may have called Mr. Norton all sorts of names, too.

Mr. Saypol: Well, I don't object to that and advisedly so, I assure your Honor, but I do object to his characterization here, what his characterization is now. If he said that to his wife ——

The Court: That is what he is saying.

Mr. Saypol: That can stand.

The Witness: That is what I said, your Honor.

By Mr. E. H. Bloch:

Q. Did you tell that to your wife over the telephone?

A. I did.

Q. And was Mr. Norton at your side when you talked with her?

A. He was.

Q. Now do you notice another gentleman who just came [fol. 1697] in at the counsel table for the prosecution?

A. Yes.

Q. Do you recognize that man?

A. Mr. Harrington, that is correct.

Q. Is that Mr. Harrington?

A. That is right.

Q. And was he one of the gentlemen who were down there the first time?

A. That is right.

Q. Did you finally leave the FBI offices in the Federal Building?

A. Well, before I did, somewhere between two and three o'clock, Mr. Norton called up Mr. Rabinowitz's office and he told me that Mr. Rabinowitz was not in. I said I would like to talk to somebody there and Mr. Rabinowitz's partner got on the phone, another lawyer, and I told him I was down at the FBI, and he said, "Are you under arrest?"

I said, "I don't know."

He says, "Ask the FBI if you are under arrest."

And I asked Mr. Norton, "Am I under arrest?"

He says, "No."

Then he said, "Pick yourself up and come down to our office," and I said, "Good bye, gentlemen", and I left the FBI office.

[fol. 1698] Q. And did you go down to their office there?

A. A little after three o'clock, I believe, when I left the FBI building here, I remember that as I walked out of the building I saw a New York Post with the picture of David Greenglass, and I picked it up, because that is the first I realized he had been officially arrested, and I went down to Mr. Rabinowitz's office.

By The Court:

Q. You mean you didn't believe what Mr. Norton and this other gentleman, Mr. Harrington, were telling you?
A. They didn't tell me he was arrested.
Q. I mean, about what Greenglass had said.
A. I didn't believe it.

By Mr. E. H. Bloch:

Q. At any rate, did you then attempt to hire Mr. Rabinowitz to take care of your interest?
A. Yes, I did, but he wasn't in his office. I talked to his partner.
Q. And were you finally referred by his partner to another lawyer and then finally referred to me?
A. Yes, that is exactly what happened.
Q. And did I become your attorney that night?
A. That is right.
Q. And have I been your attorney ever since?
A. That is correct.
[fol. 1699] Q. Now, did you at any time from the time of your interrogation on the day after Dave Greenglass was taken into custody until the time that you were arrested about a month later, ever attempt to remove any articles from your apartment or do anything to conceal any material or information from the Government authorities?
A. I did not.

Mr. Saypol: I object to that. That is calling for a conclusion. I don't know what he has in mind.
The Court: Overruled.
Mr. Saypol: If he has specific acts in mind, I wouldn't object.
The Court: Overruled.

Q. And did you continue after your interrogation by the FBI to live at 10 Monroe Street?
A. I did, sir.
Q. And did you continue to go to your business each and every day?
A. I did.

By The Court:

Q. Did you know whether you were under surveillance by the FBI at that time?
A. No, I didn't know.
Q. Did you think you were?
A. It didn't matter.
Q. Did you think you were?
A. I didn't know.
Q. I am asking you whether you thought you were.
A. I don't know, your Honor.

[fol. 1700] By Mr. E. H. Bloch:

Q. Well, now, look, I think what the Court has in mind is something that should be obvious: Did it occur to you, did the thought ever enter your mind after you were interrogated by the FBI and after they had said your brother-in-law had accused you of espionage, that maybe they let you go but they were going to watch you very closely? Did that ever occur to you?
A. It occurred to me that they would have arrested me if they suspected me.

By The Court:

Q. The answer is you didn't think you were under surveillance?
A. There was a possibility I could have been under surveillance.
Q. Did you think there was that possibility?
A. Yes, it entered my mind.

By Mr. E. H. Bloch:

Q. You went about your business?
A. That is correct.
Q. Did you come home every night?
A. I did.
Q. And did you live the same kind of routine life that you led prior to the time of your investigation?
A. Yes, I did.
Q. Now Mr. Rosenberg, tell me how many cameras you have ever owned in your life.

A. I have only—I have owned myself one camera.

[fol. 1701] Q. When did you buy that camera?

A. I didn't buy it.

Q. When did you get that camera?

A. The Kodak people were giving out free cameras to people who were born a certain year that coincided with their anniversary and I got one of those cameras.

Q. When? In what year?

A. About 18 years ago.

Q. Have you had that camera ever since?

A. That is correct.

Q. And did you from time to time take snapshots of your family and friends with that camera?

A. Well, I took some pictures with that camera.

Q. Did you ever microfilm any material?

A. No, I did not.

Q. Did you ever borrow any cameras?

A. Yes, I did.

Q. From whom and when?

A. I borrowed from my brother-in-law Bernard Greenglass, his sister-in-law Jean, and a cousin of my wife's, Julius Lewis, cameras from time to time when I went on a vacation or when I took family pictures.

Q. When you went on a vacation? Do *you* mean when you went on a vacation with Ethel?

A. That is correct, sir.

Q. Outside of those cameras, did you ever have any other camera?

[fol. 1702] A. No, I did not, sir.

Q. Mr. Rosenberg, just to come back for a second to that testimony that you spent $50. or $75. a night for entertainment: Have you ever been in a night club in your life?

A. Once.

Q. What night club?

A. Well, the Federation of Architects had a dinner party at Cafe Society.

Q. Uptown or downtown?

A. I don't remember.

Q. Was that the only night club you were ever at?

A. That is the only night club I ever attended.

Q. Now, were you in the habit of going to high class restaurants?

A. I don't know what you mean by high class, Mr. Bloch.

Q. All right. Did you ever go to restaurants where the prices were expensive?

A. Yes, I did.

Q. How many?

A. Well, once when I was taking my wife out, to a place near Emerson Radio called Pappas, and on another occasion I have eaten at a place called Nicholaus on Second Avenue.

Q. Did you ever eat at Manny Wolf's?

A. Yes, I remember eating there once.

Q. With whom?

A. When I was working as an inspector Jefferson Travers Radio they had a dinner party and they invited the inspectors down to Manny Wolf's for dinner and for a show.

[fol. 1703] Mr. Saypol: Fix the time, please.

Q. Mr. Saypol would like you, and I think we all would like you to fix the time when you went down to Manny Wolf's restaurant.

A. It was either in 1941 or 1942.

Q. Now I would like to come back for a moment to the console table. At the time that you moved into Knickerbocker Village and you had your apartment furnished, as you say, from some friends of yours, were there any console tables there?

A. There were tables there.

Q. Before I ask you the next question with relation to the console table, will you tell the Court and jury the name of your friends who permitted you to use their furniture when they went out West and you stayed on here?

A. Harry and Sylvia Steingart.

Q. Was Mrs. Steingart an engineer?

A. Yes, she was.

Q. Do you know whether or not they left you any console tables?

A. Well, they left us some tables.

Q. Well, do you know what a console table is, or I think it is pronounced console, I don't know?

A. Well, they left us two tables. If I tell you the tables they left us perhaps that will answer the question.

Q. Will you describe them?

A. They left us a maple leaf table and gate-leg table, [fol. 1704] and after they had settled in California they asked us to send them their maple leaf pieces because that was the best pieces they had lent us, and since the gate-leg table wasn't worth shipping, they left the gate-leg with us.

Q. And did you have that gate-leg table at the time you purchased this console table from Macy's?

A. Yes, I did.

Q. What happened to that gate-leg table?

A. Well, it was broken. The child was running around the house and we needed some more room; so my wife sold it.

Q. And how much did she receive for it?

A. She got $5. from a furniture dealer.

Q. Let me ask you: did that console table have any special apparatus for photographing material?

A. No, it did not.

Q. Now Mr. Rosenberg, do you know your co-defendant Morton Sobell?

A. Yes, I do.

Q. How long have you known him?

A. Well, we met at City college.

Q. You went to school with him?

A. Yes, that is correct.

Q. At least college?

A. That is right.

Q. And did he obtain a degree in engineering?

[fol. 1705] A. Yes, he did.

Q. And you obtained a degree in engineering?

A. Yes.

Q. Now, did you meet him after you graduated?

A. When we lived in Washington, D. C., in 1940 for a couple of months we bumped into each other at a swimming pool. At the same time I met him I saw Max Elitcher

and Elitcher's brother at that pool. It was an accidental meeting.

Q. And did you spend the rest of the day with each other?

A. Just a couple of seconds.

Q. When was the next time that you saw Morton Sobell?

A. Well, I don't remember exactly what year it was, but I met him in New York. He came to my house. I believe it was 1946. I am not certain of the time.

[fol. 1706] Q. Was he already married at that time?

A. I don't know; I don't remember.

Q. Did Morton Sobell and his wife Helen Sobell ever visit you at your home?

A. Yes, they did.

Q. On how many occasions?

A. There are two occasions that I remember.

Q. Tell us about those two occasions.

A. One occasion was around Christmas and Chanukah time.

Q. What year?

A. It was either '47 or '48; and they both came over, and we just visited socially.

Q. Were there any other people present at the time, that you can remember?

A. Yes, there were other people present.

Q. Do you remember the names of any people who were present, outside the Sobells, now?

A. I could recall only one name at this time.

Q. What is her name?

A. A Miss Vivian Glassman.

Q. Were there other people besides the Sobells and Vivian Glassman and you and your wife, your wife and you?

A. I don't know, but there might have been someone else. I don't remember at this time.

Q. Now did the Sobells visit you on another occasion, if you recall?

A. I recall one other occasion.

Q. Well, tell us about that, and if you can, fix the time, please.

[fol. 1707] A. Again, it was either '47 or '48. The two

occasions were approximately a year apart, except that the second occasion was in the spring time, while this was nearer Christmas time. Mr. and Mrs. Sobell came over, and I remember my wife going down with Mrs. Sobell to buy Chinese food, and they went down together and brought the food up, and we had a Chinese food dinner.

Q. Did you, alone or in the company with your wife, ever visit the Sobells?

A. No, I did not.

Q. In Schenectady, New York?

A. No, I have never been there.

Q. Or when the Sobells finally moved back from Schenectady to New York City?

A. No, I have never been to their house.

Q. Did you ever visit the Sobells in Flushing?

A. No, I did not.

Q. Is that where they live?

A. I know they live in Queens somewhere.

Q. Did Sobell ever deliver to you any information relating to the national defense of the United States?

A. He did not.

Q. Did Sobell ever disclose to you anything concerning information or material that he had obtained by reason of his position with the General Electric Company in Schenectady, New York?

A. He did not.

[fol. 1708] Q. Did Sobell ever communicate to you any information with respect to any information that he obtained by reason of his employment in the Reeves Instrument Company, here in New York?

A. He did not.

By The Court:

Q. How often had you been seeing him during that period of time?

A. Which years are you talking about, sir?

Q. '44, '45, '46, '47.

A. I would say—I am not talking about '44 and '45. I don't believe I have seen him in '44 and '45, but in '46 and '47, once or twice a year.

Q. You heard Mr. Elitcher testify that you came to see him in June of 1944 in Washington, D. C. Did you see him at or about that time?

A. I saw Mr. Elitcher in Washington, D.C., but I can't specify if it was in June 1934, if it was in '33 or '34.

Mr. E. H. Bloch: You don't mean '34; you mean '44.

The Witness: '43 or '44.

Q. When had you seen him previous to that, in 1940, was it?

A. That's right, sir.

Q. And when you went to see him on this occasion in '43 or '44, you heard him say that you had mentioned Mr. Sobell's name during the course of that conversation. Do you remember that?

[fol. 1709] A. I heard what he testified to.

Q. Now, did you go to see him pursuant to Mr. Sobell's instructions or advice, or anything like that?

A. I did not.

Mr. E. H. Bloch: I was coming to that conversation right now, your Honor.

By Mr. E. H. Bloch:

Q. Now, did there come a time in the course of your employment with the United States Government that you were assigned to do certain work in Washington, at the Bureau of Standards?

A. That's right.

Q. About how long did you remain in Washington to complete your assignment?

A. Well, I don't remember the exact number of days, but I know it was about three to five days.

Q. Did you call Mr. Elitcher on the telephone while you were down on that assignment in Washington?

Mr. Saypol: May we have the dates fixed when he had this assignment?

The Court: All right.

Q. Can you remember specifically when you were assigned by the United States Government to come down to Washington to do some work at the Bureau of Standards?

[fol. 1710] A. I can't remember specifically, but my Gov-

ernment travel records will show when I was assigned to Washington.

Q. Well, independently of any Government records, we want you to give us your best recollection, either the exact day or the month or at least the year.

A. I would venture a guess. It was 1944, somewhere between the summer and autumn, about that time.

Q. Is that your best recollection?

A. I am not certain of it, though.

Q. All right. Now, at any rate, did you call Mr. Elitcher on that occasion when you were down in Washington?

A. Yes: I was there alone and I was lonesome and I looked up in the telephone book for Mr. Elitcher's number, and I called him one evening.

Q. Did he invite you over to the house?

A. Yes, he did.

Q. Did you come over to the house?

A. Yes, I did.

Q. Was his wife present?

A. His wife was present.

By The Court:

Q. Had you been in Washington between 1940 and that particular date?

A. No, I hadn't.

Q. That was the first visit since 1940?

A. Since 1940.

[fol. 1711] By Mr. E. H. Bloch:

Q. Now, did you have anything to eat at the Elitcher house, if you remember?

A. Well, all I could recollect is that I either had some coffee or some pie, or some coffee and some dessert.

Q. Now, did you sit around with Mr. Elitcher and his wife and talk after you had your coffee and dessert?

A. Yes, we did.

Q. I want you to tell the Court and jury, as best you can—nobody expects you to give the exact words—the substance of what you talked about that night?

A. Well, I told him I was in Washington on my job;

I told him I was working with the Signal Corps; I told him the rating I held. He told me he was working for the Government; he told me his rating that he held; and we discussed—I told him about my child—and we discussed the climate in Washington, it is hot in the summer time, cold in the winter time; and we discussed the war.

Q. Did you discuss the particular kind of work that you did at your job?

A. No, I just told him I was on an inspection job at the Bureau of Standards.

Q. Did you discuss the particular work that he was doing at his job?

A. No, he just told me that he was doing engineering work.

[fol. 1712] Q. Did you during the course of that evening ever say to Mr. Elitcher in specific words or by implication, that you wanted him to engage in espionage work, or, let me put it this way, or that you wanted him to get certain information from the Government by reason of this access to certain secret information?

A. I never said anything of the sort.

Q. Did you discuss politics?

A. Yes, I did.

Q. Did you discuss the Soviet Union?

A. Yes, I did.

Q. Did you discuss the war?

A. Yes, I did.

Q. Tell us what you said to Elitcher and what he said to you?

A. Well, we discussed the progress of the war, the fact that the German Army was taking a beating at that time, and that a terrific amount of power is being built up by the Allies to put the finishing touches to the war; and we discussed the fact that the Russians had been carrying a very heavy burden in the war.

Q. Now did you at that time find out whether Mr. Elitcher was a member of any labor union?

A. I believe he may have mentioned in the conversation that he was a member of Federal Workers. I am not certain.

Q. Did his wife mention to you whether she was a member of any union?

A. Yes, I believe they both said they were members of the union.

Q. Have you recounted now substantially everything that [fol. 1713] was said on that first visit down at Elitcher's apartment in Washington?

A. Substantially, what I could remember.

Q. Did there come a time when you visited Elitcher again in Washington?

A. Yes, there did.

Q. Do you remember when that was?

A. Well, I can't remember it exactly. It was some time in 1945, after I was dismissed by the Federal Government.

Mr. E. H. Bloch: May this be offered for identification, please?

(Marked Defendants' Exhibit E for Identification.)

Mr. E. H. Bloch: And may this be offered for identification, the whole folder?

(Marked Defendants' Exhibit F for identification.)

Q. Now, did you notice that I tore out this piece of paper, Defendants' Exhibit E for identification, from a file which has been marked Defendants' Exhibit F for identification (showing)?

A. Yes, I did.

Q. Take a look at Defendants' Exhibit F for identification and tell us what that represents.

A. This file states "Rosenberg, Julius, fact, ind. member cases."

Q. Does that file contain the history of your controversy with the Federal Government at the time or in connection with your separation from the Federal Government?

A. Yes, it does.

[fol. 1714] The Court: Which file? Whose file is it?

Mr. E. H. Bloch: I got that from his lawyer's office.

The Court: From whose lawyers' office?

Mr. E. H. Bloch: From his lawyer's office, Victor Rabinowitz's office.

The Court: I think you ought to identify the file. The impression I got was it came from the Government.

Mr. Saypol: I can't figure out what the procedure is. I never heard of anything like it.

By Mr. E. H. Bloch:

Q. Now, I am going to ask you what that file is.

Mr. Saypol: I don't care what it is. I expect this witness to testify orally, and then anything to support it by documents.

The Court: I don't know what is coming yet.

Mr. Saypol: I don't myself.

A. This was the record of my case with the Government at the time of my dismissal.

Q. Now that file that you have is your private file, or the private file of the lawyer who represented you; is that correct?

A. That is correct.

Q. That file doesn't come from the files of the United States Government, does it?

A. No, there are papers from the United States Government in it.

[fol. 1714-A] Q. All right. Now, I am going to show you Defendants' Exhibit E for identification and ask you whether, after looking at that paper, that refreshes your recollection as to the second time that you visited Elitcher at his home in Washington?

A. Yes, it does.

Q. And when do you say you visited Elitcher for the second time in Washington?

A. In April 1945.

[fol. 1715] Q. And I want you to tell the Court and Jury the circumstances under which you came to visit Elitcher at his home in Washington in April 1945?

A. Well, I wrote this letter to——

Q. No; just don't characterize what is in the contents of a paper that hasn't been marked in evidence yet. Just tell us how you came down there.

A. I wrote to Mr. Rabinowitz in April, telling him——

The Court: No, don't tell us that.

A. No, don't say that.

The Court: Tell us when you saw Elitcher again.

Q. Tell us when you saw Elitcher and the circumstances under which you came to Washington and saw him?

A. Well, that is the circumstances that made me go to Washington. I asked Mr. Rabinowitz——

Mr. Saypol: Just a moment. I don't care what the circumstances were as long as he is refreshed and says it is April 1945.

The Court: That is right. You saw Elitcher in April 1945. You remember now that that is the time.

Mr. E. H. Bloch: That is right.

The Court: We don't care what brought you there. Just tell us what happened.

[fol. 1716] Mr. E. H. Bloch: Let me ask a few questions, your Honor, I think I can clear it up.

Q. When did you reach Washington in April 1945?

A. It was on a weekend, a Saturday morning.

Q. And had you taken a night train from New York?

A. Yes, I did.

Q. What was the first thing you did when you got into Washington?

A. I got into Washington too early to conduct any business. I went out of the station—I believe it was the Pennsylvania Railroad Station—ate, bought a newspaper, read and sat around until 9 o'clock.

Q. What did you do at 9 o'clock?

A. At 9 o'clock I called up the office of my Congressman, Samuel Dickstein and asked——

Mr. Saypol: Never mind, I object to that.

Q. All right, you called up your Congressman's office——

Mr. Saypol: I ask that that be stricken out. I don't care about Congressmen, if the Court please, in a trial like this.

The Court: Oh, let us have it, it is in the record.

Q. As a result of calling up your Congressman's office, did you see your Congressman?

A. No, he wasn't in his office at that time. They told

[fol. 1717] me to call back later, perhaps they could locate him.

Q. After that telephone call did you go over to Elitcher's house?

A. Yes, I did.

Q. And did you see Mr. Elitcher?

A. I did.

Q. And did you see Mrs. Elitcher?

A. I did.

Q. And did you have a conversation with Mr. Elitcher?

A. I did.

Q. Now tell us what that conversation was about?

A. I told the Elitchers that I had come to Washington to try to see my Congressman and some people of the Federal Workers who knew about cases of dismissed employees, and I was going to Washington to try to get—I don't remember the name of both people I came to see—a Mr. Stein and another person, to go with me to see my Congressman and tell me the procedure in appealing my case.

Q. And did Elitcher reply to that?

A. Yes. He told me he and his wife were going down to the union headquarters and if I want I can come along with them.

Q. And did you go along with them?

A. Yes, I did.

Q. And did you drive in their automobile to union headquarters?

A. I did.

Q. When you got to the union headquarters did you see Mr. Stein?

A. No, I spoke to a volunteer worker there and they told [fol. 1718] me there——

Mr. Saypol: I object to what they told him.

Q. Just don't tell us about the conversation.

A. I didn't see Mr. Stein.

Q. And as a result of going to the union headquarters with the Elitchers, did you go some place afterwards?

A. Yes, I did.

Q. Now before you went to that some place else, did you say "Good-by" to the Elitchers?

A. Yes, I did.

Q. Did you have any conversation with Elitcher or Mrs. Elitcher at that time with respect to any espionage or getting any secrets from the Government?

A. I did not.

Q. Did you leave the Elitchers at the union hall?

A. Yes, I did.

Q. Did the Elitchers direct you how to get to the place that you were going to?

A. They did.

Q. Did you take a trolley car?

A. I did.

Q. And where did you go to?

A. I do not remember the exact street but it was either F or G Street.

Q. And was that to see Mr. Stein and this other official?

A. That is correct.

Q. Did you see them?

A. No, I did not.

Q. What did you do after you didn't see them?

A. Well, I just went home.

[fol. 1719] Q. And did you arrive home later——

A. But before I went home I called my Congressman again and they said they couldn't locate him, to try in New York.

Q. Incidentally, prior to the time that you went down to call your Congressman in Washington had you tried to communicate with him in New York?

A. I did. I called his home, his office——

Mr. Saypol: Just a moment. I have been very hesitant about objecting. I am not here to defend the Congressman. The Congressman is not on trial. It is so utterly immaterial——

Mr. E. H. Bloch: I do not think anybody is accusing the Congressman.

Mr. Saypol: But I think it is so utterly immaterial that in the interests of conservation of time and in the interests of the merits of the trial we ought to get along.

The Court: Are you finished with this subject?

Mr. E. H. Bloch: Just one question.

Q. Did you attempt at any time to conceal your identity or the fact that you were in Washington, D. C. on that second visit to Elitcher?

A. I did not.

Mr. E. H. Bloch: I think I am almost through; I want to find out whether I overlooked anything.

(Mr. E. H. Bloch confers with Mr. A. Bloch, off the record.)

[fol. 1720] Q. Mr. Rosenberg, there has been testimony here from the Greenglasses that sometime in the latter part of May—I think it was Memorial Day—that they went and got certain passport photo pictures and they kept one set and they gave you five sets. Did you ever get any five sets of photos from them?

A. I did not.

Q. Did you know that they had taken any photos?

A. I did not.

Q. Did you ask them to take any photos?

A. I did not.

Q. Just one last question; Did you ever have any arrangement with Dave Greenglass or Ruth Greenglass or any Russian or with your wife or with anybody in this world to transmit information to the Soviet Union or any foreign power?

A. I did not have any such arrangement.

Q. Did you ever engage in any such traffic or transactions?

A. I did not.

Mr. E. H. Bloch: I think I am through, your Honor.

By The Court:

Q. Has Mr. Sobell ever been at your home?

A. Yes, he has.

Q. When? Do you remember the occasions?

A. He has been there in '48; he has been there in '49 and [fol. 1721] been there in '47.

Q. Do you remember how many times each year?

A. I would say a couple of times.

Q. What does that mean—about twice?

A. About twice.
Q. Each year?
A. That's right.

Mr. E. H. Bloch: I am sorry, your Honor, I forgot to cover two incidents in connection with the testimony of Elitcher.

By Mr. E. H. Bloch:

Q. Did you ever meet Elitcher at 42nd Street and Third Avenue at which Sobell was present, at which you took a walk with Sobell and Elitcher and thereafter ate with Elitcher at Manny Wolf's?
A. No, I did not meet Elitcher and Sobell there.
Q. Did you——
The Court: Did you ever meet them together?
The Witness: Only in Washington, D. C. at that swimming pool.
The Court: Never since?
The Witness: Never since.
Q. I believe Mr. Elitcher testified that this incident about 42nd Street and Third Avenue occurred in June in 1948. Did any such incident occur?
A. It did not.
[fol. 1722] Q. Did you ever——
The Court: Excuse me—did you ever discuss with Mr. Sobell Mr. Elitcher?
The Witness: No, I did not.
The Court: After the swimming pool incident?
The Witness: No, I did not.
The Court: Did his name ever come up when you saw Mr. Sobell in 1947 or 1948?
The Witness: No.
The Court: Never mentioned the name?
The Witness: No, we didn't mention the name.
Q. I would like to ask you this——
Mr. E. H. Bloch: This is another incident that I forgot to cover, your Honor.
Q. —I think it was Mr. Elitcher who testified that he once went in an automobile with Mr. Sobell down to some place near your house, Sobell got out, went out of the automobile to go to your house.

Did Mr. Sobell ever bring to you any microfilm can or microfilm or any material whatsoever?

A. He did not.

Mr. E. H. Bloch: I think that is all.

The Court: Would you like to have a recess at this point?

Mr. Saypol: However your Honor desires. Maybe it is [fol. 1723] advantageous and then we can go right on.

The Court: All right, we will take a recess.

(Short recess.)

The Court: Before Mr. Saypol begins his cross-examination I think I should tell the jury that we will not have a session tomorrow. Judge Knox, the Chief Judge of the court, has several weeks back declared that there would be no calendars on that particular day. It is a holy day and I am sure a lot of members of the jury will probably want to respect the day and I shall not have a session tomorrow. We will have our next session Monday morning.

Proceed.

Cross-examination.

By Mr. Saypol:

Q. Mr. Rosenberg, tell us a little bit about your associates when you were at City College. Who were they?

A. Fellow students I attended school with.

Q. Yes?

A. Morton Sobell attended City College. There was Benjamin Yelsey. I believe he changed his name from Yelsey.

Q. Spell Yelsey?

A. Y-e-l-s-e-y. Marcus Pogarsky; Joel Barr.

Q. That is the man whom you told us today you lived with your wife for about a year over in Williamsburg and you forgot to tell us about that yesterday, is that right?

[fol. 1724] A. That is correct. Max Elitcher attended City College at that time. That is about all I can remember at this time.

Q. Was there a man or a boy by the name of Perl or Mutterperl?

A. Your Honor, I read in the newspapers about——

The Court: You had better not say anything you think may hurt you.

The Witness: Yes, sir, that is what I want to say. I read in the newspapers about a man being arrested for perjury——

Q. Before you tell us that——

A. Wait a second. I would like to finish my statement.

The Court: Let him finish, Mr. Saypol.

The Witness: My name was mentioned and I feel that I refuse to answer any questions that might tend to incriminate me.

Mr. Saypol: You see, that is all I wanted to know, whether he knew him because if he said no I should not have to press it.

Now, in the posture of the case as it is, the witness raises a question of incrimination, apparently of the defendant's own making on his direct examination. That may occur and I should ask the Court not to make any positive direction except as I may request it. In other words, I shall [fol. 1725] try to be selective in my questions until such time as I deem it necessary.

The Court: Then I will consider you are not pressing the question.

Mr. Saypol: Yes.

The Court: Where he asserts privilege.

Mr. Saypol: Yes.

The Court: Therefore I will make no ruling.

By Mr. Saypol:

Q. So the state of the record is in respect to a man named Perl or Mutterperl you raise the question that an answer might tend to incriminate you, is that right?

Mr. E. H. Bloch: Wait a second. That has already been asked and answered and I don't think there should be too much of a statement or discussion about it.

The Court: All right.

Q. Were there any other persons that you forgot to tell us about or you haven't told us about that you were friendly with or associated with at City College?

A. Yes. There was a man by the name of Joel Barr.

Q. Where is Joel Barr today, do you know?

A. To the best of my knowledge he is in Europe today.

Q. Did you have anything to do with getting him into Europe?

A. No, I did not.

[fol. 1725-A] Q. Are there any others?

A. That is about all I can remember at this time.

Q. Was there any common activity or were there any activities which brought this group you have named together.

A. Yes.

Q. And what were those?

A. There was a student chapter of the American Institute of Electrical Engineers at City College and I was a member of it.

[fol. 1726] Q. Any other activities?

A. I don't understand what you mean, Mr. Saypol?

Q. Well——

The Court: He wants to know whether you belonged to anything else with them; did you have any club or anything like that?

The Witness: What kind of a club?

Q. You tell me.

A. I don't understand the question.

Q. Well, were there any other associations, clubs, fraternities, organizations, study groups, lunch clubs, dinner clubs, at the college, at which you and these others or some of them met together, talked together?

Mr. E. H. Bloch: If the Court please, I think that the question is very general, but that is not the reason I am objecting to it. I feel that we may be intruding now in that ground of political activity which we discussed with the Court.

Mr. Saypol: I don't think so at all. I think I observe a distinct reticence on the part of the witness to answer my question.

Mr. E. H. Bloch: I object to any statements on the part of Mr. Saypol.

The Court: Wait a minute, wait a minute. You are not objecting to the form of the question; is that right?

[fol. 1727] Mr. E. H. Bloch: That is right.

The Court: I think the witness can answer the question. If he can't answer the question, the witness seems to be very intelligent; he seems to know just what his rights are; he didn't have to have any probing from you before to assert any privilege. I think he knows what his rights are.

Mr. E. H. Bloch: Now, if the Court please, I would like to make a statement for the record in support of my objection, and it is going to be very brief. If this question seeks amongst other things to elicit from this witness any association by him with the Young Communist League or anything to do with communism, I object to it, at least to that portion of the question which seeks to elicit that.

The Court: On what ground?

Mr. E. H. Bloch: Upon the ground that no causal relationship has been proved or established.

The Court: You are not objecting then on any constitutional ground?

Mr. E. H. Bloch: Yes, of course.

The Court: Oh, you are objecting on the causal ground.

Mr. E. H. Bloch: I am objecting on the causal ground, [fol. 1728] and it is for the witness and not for me to assert his privilege.

The Court: On your ground, it is overruled.

Mr. E. H. Bloch: All right, I respectfully except.

The Court: Now, I am not ruling on the privilege.

Mr. E. H. Bloch: You see, I can't exercise any privilege for the witness.

The Court: I just want to be sure what you were doing.

Mr. E. H. Bloch: That is right; I am objecting on a strictly legal, logical, if you will——

The Court: That is right; overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: Maybe I can help the witness.

The Witness: Your Honor, can I say something?

The Court: Do you understand the question? First I want to make sure that you understand the question. Do you?

The Witness: No, I do not.

Q. Well, is there a Boy Scout troop up there?

A. Not to my knowledge.

Q. So you didn't belong to that; is that right?

A. I did not belong to that.

[fol. 1729] Q. Was there a Hillel Society up there at City College?

A. Yes, I believe there was.

Q. Were you all active in that?

A. No, I was not.

Q. How about the others?

A. What others?

Q. Those whom you have named.

A. I don't know what their activities were.

Q. Well, you don't know that they were active, for instance, in Hillel?

A. I do not know.

Q. Were there any civic clubs up there, that you were active in?

A. I don't believe there were any civic clubs at the college.

Q. Were there any fraternities that you and that group were members of?

A. Mr. Saypol, there was no group.

Q. Well, I am talking now about those that you told us about, that you knew up there.

A. Not to my knowledge.

Q. Now, tell us what groups you were active in.

A. I stated before, I was a member of the American Institute of Electrical Engineers.

Q. That we know, but what others? Were there others?

A. Yes, there were other groups on the campus.

Q. What were they?

A. Students council.

Q. Were you active in the students council with them?

A. I participated in student council activities.

Q. With Barr and with Elitcher and with Sobell?

[fol. 1730] A. Not with them; by myself.

Q. What other groups?

A. There was the American Students Union on the Campus.

Q. Were you active in that?

A. I was a member of the American Students Union.

Q. Any others?

A. That is all that was on the campus.

Q. Was there a Karl Marx Society?

A. To my knowledge, I don't know.

Q. Well, what did you have in mind, what group did you have in mind a moment ago when you raised the question of your constitutional right against self-incrimination?

Mr. E. H. Bloch: I object to the form of the question. I object to its substance, if your Honor please.

The Court: No, I think that it is proper. He can tell us what group he had in mind and then assert his privilege.

Mr. Saypol: Let me put it this way to protect the record, if your Honor will allow me.

The Court: All right.

Q. Is there a group that all of you were active in together, as to which you raise the question of your constitutional privilege, that you don't want to tell us about?

[fol. 1731] Mr. E. H. Bloch: I object to the form of that question. I think that is highly improper.

The Court: Well, no, I agree with you, but I do think that this question may be asked:

Do you know what your lawyer had in mind when he took an objection to it?

The Witness: That is in his mind, your Honor, not in my mind.

The Court: In other words, you don't know?

The Witness: No, I don't know.

The Court: You haven't any idea what he had in mind?

The Witness: No.

Mr. Saypol: You see, I don't want to couch it the way I did originally, that is, ask him what the group was to which he objected, because that might be suggestive of an indirect way of getting in what I had in mind.

The Witness: Can I state something, sir?

The Court: Yes.

Mr. Saypol. You will in a minute.

The Court: Let him state.

The Witness: I would like to state, on any answer I made on this question, I don't intend to waive any part of my

right of self-incrimination, and if Mr. Saypol is referring to the Young Communist League or the Communist Party, [fol. 1732] I will not answer any question on it.

The Court: You mean, you assert your constitutional privilege against self-incrimination.

The Witness: That's right.

By Mr. Saypol:

Q. How about the Steinmetz Club; is that in the same category?

A. I do not know, sir.

Q. Were you a member of that?

A. Again, sir, I refuse to answer the question on the grounds it might tend to incriminate me.

Q. Well, a moment ago you said you didn't know and—well, do you know, and for that reason you raise the question of privilege?

A. (No answer.)

Mr. Saypol: All right, we will move on.

Q. Now, how well did you know Elitcher up there?

A. Very casually.

Q. How frequently did you see him?

A. Very infrequently.

Q. Once a week?

A. No.

Q. Did you go out with him socially?

A. I did not.

Q. Did you have girls, girl friends together?

A. We did not.

Q. Did you go to dances together?

A. We did not.

[fol. 1733] Q. Did you discuss the affairs of the day and politics together?

A. I didn't have the occasion while we were at school.

Q. And you graduated in 1939, I think, didn't you?

A. That is correct.

Q. In February?

A. Right.

Q. Then the next time that you saw him was at a swimming pool for a minute in Washington, in 1940; is that right?

A. That is correct.

Q. How long did you see him, for just a minute?

A. That's right.

Q. Was he in the water or was he out?

A. Out side the water.

Q. What did you talk about in that minute, very much?

A. Just, "Hello. I am working in Washington." That is what he said to me.

Q. Then you didn't hear from him or see him again until when?

A. Until sometime in '44.

Q. Now, you were a little bit uncertain about the date in 1944, four years from the day you saw him at the swimming pool; can't you fix the date in a more positive way?

A. I cannot, sir.

Q. Well, let's see now. Do you recall when D-Day was in 1944?

A. I do not remember the day.

Q. Well, if I tell you that it was June 4th, 1944, would [fol. 1734] that refresh your recollection?

A. I take your word for it that it was June 4th.

Q. Well, it was June 6th, take my word for it, it was June 6th, and would that act as a refresher as to the date when you saw him?

A. No, it would not.

Q. Do you remember hearing him testify that when you saw him on that date in 1944 you had a toast to D-Day?

A. I heard him testify.

Q. D-Day was the date, really, of the second front, was it not?

A. I believe so.

Q. And you and he were quite elated about that, were you not?

A. I don't recall being elated about that, at that time.

Q. Well, did you have a drink that night, as he described?

A. I don't recall having a drink at his house, except for a cup of coffee.

Q. Do you recall having talked about the invasion as a distinct aid to Russia?

A. I don't recall having talked about that.

Q. Were you pleased about the fact of the invasion?

A. I just said I don't recall about talking about the invasion.

Q. I say, were you pleased? Were you happy about it?

A. When the second front was open?

Q. Right.

A. Yes, I was happy when the second front was open.

[fol. 1735] Q. You don't remember talking to him about it that night?

A. No, I don't remember.

Q. Now, at City College you saw him infrequently; then after City College, a year later, in 1940, you saw him for a minute in a bathing suit; is that right?

A. That is correct.

Q. And then four years later, when you were in Washington, you decided that you wanted to call him and pay him a visit?

A. That's right.

Q. Well, what was it that you wanted to see him about?

A. I was lonesome and I just wanted to see somebody to talk to.

Q. But you didn't know him very well, did you?

A. Well, he went to the same school I went to.

Q. And you didn't know him very well at the same school that you both attended?

A. That's right.

Q. And between 1939 and 1944, the only time you saw him was at the swimming pool for a minute?

A. That is correct.

Q. And you hadn't written to him?

A. No, I hadn't.

Q. He hadn't written to you?

A. He did not.

Q. Had you talked to anybody about him?

A. I did not.

[fol. 1736] Q. Had anybody talked to you about him?

A. No, they didn't.

Q. Did you know in the interval whether he was alive or dead?

A. I didn't know.

Q. And out of the clear sky you looked in the telephone book under "E" for the name Elitcher and you called him up?

A. I was looking for some——

Mr. E. H. Bloch: I object to the form of the question, "out of the clear sky."

The Court: This is cross-examination.

Mr. Saypol: Maybe it was raining. I beg your pardon.

Mr. E. H. Bloch: Maybe it was, I don't know.

A. (Continuing) Mr. Saypol, I was looking in the phone book for any names that I could recognize as former classmates or people I knew at one time.

Q. Where did you look in this phone book?

A. At a telephone book.

The Court: What names were you looking for?

The Witness: For some names I might recognize.

The Court: You mean, you started with "A" and started going——

The Witness: No, I didn't just start with "A"; I thought of a couple of people's names who might be in Washington; I remembered the incident at the swimming pool at that [fol. 1737] time, that Elitcher was in Washington, and perhaps he had a telephone.

The Court: What other names did you think of, do you remember?

Mr. E. H. Bloch: The Judge asked you a question.

The Witness: Sobell.

By Mr. Saypol:

Q. Was Sobell in Washington at the time?

A. I looked up his name; I couldn't find it in the book.

Q. How many days had you been in Washington when you decided that you were lonesome and you wanted to look up somebody?

A. I believe it was about the second or third day of my stay there.

Q. Well, had you met any people in the Bureau of Standards, with whom you were working?

A. No.

Q. While you were there?

A. I met some people there, but I didn't know them socially.

[fol. 1738] Q. Did you know Elitcher socially?

A. No, but he had been a former classmate.

Q. But you hadn't seen much of him, had you?

A. That is correct.

Q. Now what did you talk about when you got to his house, or, wait, let me withdraw that—telephone to—is that right? You found the number; right?

A. That is correct.

Q. What was the conversation? What did you say and what did he say?

A. I said something to the effect: "I am in town; can I come over to see you."

Q. Well, did you tell him what your name was?

A. Sure.

Q. Did he recognize your name right away?

A. I don't recall if he did or if he didn't, but he says "Come over."

Q. Did you tell him before that you were the fellow who used to go to school with him and saw him at the swimming pool for a minute four years ago?

A. I told him I was a classmate of his.

Q. I beg your pardon?

A. I told him I was a classmate of his.

Q. Did you tell him about the swimming pool?

A. I didn't tell him on the telephone.

Q. And he invited you over?

A. He did not.

Q. What time did you get there?

A. Sometime during the—their supper.

[fol. 1739] Q. How long did you stay there?

A. I would say about an hour. I am not too sure about the length of time but I would say approximately an hour.

Q. Was he glad to see you?

A. He was cordial.

Q. Were you glad to see him?

A. Yes, I was.

Q. Now tell us, what did you talk about? Did you tell

him why you came to see him? Didn't he ask you "Just why out of the clear sky do you pick on me to pay a visit to like this? I never really knew you."

A. He didn't say that.

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. He said to me, "What are you doing in Washington?" I told him, "I am here on an assignment," and I told him I was at the Bureau of Standards in ref—in regard to some work.

Q. Do you know whether Elitcher was in the——

By The Court:

Q. Excuse me. Did you know what he was doing at that time in Washington?

A. He said he was working for the Navy Department.

Q. Did he volunteer that or did you ask him?

A. Well, as we were talking and I told him where I [fol. 1740] worked, when he replied to me he told me where he worked.

Q. Did you ask him in what branch of the Navy he was working?

A. No, I didn't.

Q. Did you ask him what kind of work he was doing in the Navy?

A. He volunteered the fact that he was doing engineering work.

Q. On what, did he tell you?

A. Not specifically.

The Court: Proceed.

By Mr. Saypol:

Q. Of course you hadn't known before what he was doing?

A. I did not.

Q. I mean his employment?

A. I didn't know where he was working.

Q. And I take it that he didn't know what your employment was for?

A. He didn't.

Q. But you told him what yours was during the conversation?

A. Correct.

Q. Had you known of Elitcher's activities in the Young Communist League at City College?

Mr. E. H. Bloch: Well, if the Court please, I think that presupposes a state of facts that is not proven. I do not recollect that Elitcher testified that he was a member of the Young Communist League.

The Court: Oh, yes, he did, he did. That is my recollection.

Mr. E. H. Bloch: I just want to be clarified—I think you [fol. 1741] are right.

The Court: Yes, I am quite sure of that.

Mr. E. H. Bloch. All right, I will withdraw my objection. your Honor. It was on a purely factual ground.

Q. Had you known——

A. I didn't know whether he was or he was not.

Q. Had you known of any activities on his part in the Communist Party at City College?

A. I didn't know whether he was or was not a member.

Q. Now in the course of the conversation there, was there a time when you asked him to tell his wife to leave the room?

A. I did not ask him to tell his wife to leave the room.

Q. Was there a time when she left the room?

A. What room are you talking about?

Q. The room that you were in.

A. I was in two rooms.

Q. I beg your pardon?

A. I was in two rooms.

Q. Was there a time when either at your request or at his request Mrs. Elitcher left your presence and left you alone?

A. There was no time that I requested it or he requested his wife to leave the room, but there was a time when she went in to do the dishes, from the living room to the kitchen.

Q. Now then, what did you talk about?

A. Talked about my job, where I was working at, the [fol. 1742] fact that he was working for the Government, what his rating was, what my rating was. We talked about Washington, D. C.; we talked about my family, and I asked him about his health and then we talked about the topics of the day.

Q. Well, what were the topics of the day?

A. The war.

Q. And what did you talk about in connection with the war?

A. What the latest news was about the war.

Q. Well, what was the latest news?

A. I don't remember at this time what was the latest news.

Q. That was at or about the time of the invasion—does that perhaps refresh you as to the topic which was discussed between you?

A. I can't recall if it was at or about the time of the invasion. It may have been before; it may have been after.

Q. Now you remember while testifying before in response to your lawyer's questions as to conversations at your home sometime in January of 1945 with the Greenglasses, you testified about the comparative systems of justice in this country and in Russia. Do you recall that?

A. I didn't testify that we had a conversation at my house about the comparative systems of justice. I was asked my opinions on it.

Q. Wouldn't that imply a conversation if somebody asked your opinion?

A. No; there may have been——

[fol. 1742-A] Mr. E. H. Bloch: I object to the form of the question, your Honor.

Mr. Saypol: Well, all right, we won't quibble about it.

Q. You were asked your opinion, and did you give your opinion?

A. I did, sir.

Q. How did you do that, in writing or by telegraph or did you talk?

A. I just talked on the stand here.

[fol. 1743] Q. Did you talk at the house in January, 1945, about the system of justice here and the system of justice in Russia and the system you preferred?

A. That is right.

Q. So you did talk about it, didn't you?

A. I don't remember if it was that specific conversation at that time or another time, but I talked about these things.

By The Court:

Q. Was that perhaps the topic that was discussed between you when you talked with Elitcher at his home in 1944, the year before?

A. No, it was not.

Q. Was that one of the topics that was discussed at the family gatherings?

A. It was one of the topics we discussed.

By Mr. Saypol:

Q. And was there also discussed so-called Russian advances?

A. I don't know what you mean, Mr. Saypol.

Q. Well, I am just reading from my notes as you testified a little while ago, about conversations you had at your home with the Greenglasses in January, 1945. Didn't you tell us before that you expressed your opinion about Russian advances?

A. That is right.

Q. Advances in the Russian way of life, is that what you meant?

A. No. I am talking about advances their army made [fol. 1744] in the winter campaign against the Nazi army.

By The Court:

Q. I believe you were referring, at least I understood your answer to refer, to the advances in the economy and benefit to the people.

A. Oh, yes, that is another point I expressed.

By Mr. Saypol:

Q. You did talk about that in January, 1945, in the Greenglasses' household, or rather in your household, is that right?

A. I talked about it.

A. Did you perhaps talk about that with Elitcher in 1944?

A. I don't recall talking about it with Elitcher.

By The Court:

Q. Did I understand you to say here, or if you didn't I ask you the question; Did you in 1944 or 1945 state, and I believe you stated on direct but I am not quite sure, that you had thought Russia was carrying the brunt of the war at that point?

A. That is right, sir.

By Mr. Saypol:

Q. Of course, you didn't say that in 1945, did you after the invasion?

A. No, I wouldn't say that in 1945.

Q. That opinion you probably expressed before the invasion?

A. That is correct.

Q. In other words, you were advocating, too, the second [fol. 1745] front?

A. Well, here is what I would like to state, Mr. Saypol, that I still felt that the Russians contributed the major share in destroying the Nazi army. That is my opinion even after the invasion.

Q. And Russia as an antagonist and a participant in the war you felt was entitled to more help than the allies were giving to her?

A. I didn't say that, Mr. Saypol.

The Court: He is asking you whether you felt that.

The Witness: No. I felt that Russia should get as much help as possible to help them defeat the Nazis.

By The Court:

Q. Well now, did you feel that if Great Britain shared in all our secrets that Russia should at the same time also share those secrets in 1944 and 1945?

A. My opinion was that matters such as that were up to the Governments, the British, American and the Russian Governments.

Q. You mean the ultimate decision?

A. Yes.

Q. Well, what was your opinion at that time?

A. My opinion was that if we had a common enemy we should get together commonly.

By Mr. Saypol:

Q. Was that predicated on your feeling that we were [fol. 1746] not doing enough for Russia?

A. It wasn't predicated on that.

Q. What was it predicated upon?

A. My opinion——

Q. What did you form your opinion on? What basis?

A. Mr. Saypol, I am no expert on those matters or authority on those matters.

Q. Well, what did you know about the subject to express an opinion? Did you talk about it with others?

A. I read it in the newspapers.

Q. Did you talk about it in groups?

A. Socially, when people came over to the house.

Q. Did you talk about it perhaps in any Communist unit that you might have belonged to?

A. I refuse to answer that question on the ground that it may incriminate me.

Q. Now, in connection with your express opinions on the Russian situation with relation to the war effort, did you do——

The Court: I want the jury to understand that they are to draw no inference from the witness' refusal to answer on his assertion of privilege. Proceed.

Q. Did you do anything else besides talk in respect to your feeling, your opinion about the Russian position in the war?

A. I didn't do anything else but express my opinion. [fol. 1747] Q. You told us a little while ago about that time your wife operated her typewriter in connection with civil defense, is that right?

A. That is correct.

Q. Did she operate that typewriter in support of anything else? Any other movement besides your union movement?

A. Civil defense and the union.

Q. Any movement allied with the Russian war effort?

A. Not to my knowledge.

Q. Did you ever make any contributions to the Joint Anti-Fascist Refugee Committee?

A. Yes, I believe I did.

Q. That is known to be an organization deemed subversive by the Attorney General.

Mr. E. H. Bloch: I object to the question upon the ground that it is improper; it is inflammatory and has nothing to do with the issues.

The Court: I sustain the objection.

Mr. Saypol: May I submit to the Court that pursuant to Presidential Executive Order No. 9835 it has been so classified by the Attorney General.

The Court: I don't think that is a subject matter that you ought to go into.

Q. Did you do anything more than that?

A. I don't understand what you mean, Mr. Saypol.

Q. Did you do anything more than contribute? Did [fol. 1748] you exercise your personal efforts by speaking or writing? Anything like that?

A. I don't understand what you mean, Mr. Saypol.

Q. Did you ever go out and collect any money for the Joint Anti-Fascist Refugee Committee?

A. When are you talking about?

Q. I don't know. You tell me.

A. I don't recall collecting any money, but I recall contributing money.

Q. Do you remember at the time the agents arrested you? Did you ever see this before?

Mr. Saypol: May this be marked for identification in some way, Mr. Schaefer.

(Marked Government's Exhibit 27 for identification.)

Q. Do you remember when the agents arrested you and they took that out of your house?
A. That is correct.

Mr. Saypol: I offer it in evidence.
Mr. E. H. Bloch: I have no objection.
The Witness: I would like——
Mr. Saypol: Just a minute.
The Witness: (Continuing) —to talk about this a moment, your Honor, if it is possible.
The Court: First let us have it marked and then you can talk about it.

(Government's Exhibit 27 for identification received in [fol. 1749] evidence.)

Mr. Saypol: May I read the label to the jury?
The Court: Yes.
Mr. Saypol: Will it be conceded that this is a can commonly used by solicitors for contributions?
Mr. E. H. Bloch: I will so concede.
Mr. Saypol: And the can reads on the label "Save Spanish Republican Child, Volveremos, We will return, Joint Anti-Fascist Refugee Committee, 192 Lexington Avenue, Suite 1501," and there is a notice on the back indicating that the City of New York permits these cans to be used for solicitation.

By Mr. Saypol:

Q. So that perhaps you did a little more than just contribute?
Mr. E. H. Bloch: Just a second, if your Honor please.
Q. Is that so?

Mr. E. H. Bloch: Wait a second: I object to the question. It presupposes a state of facts not proven. The can may have been found——
The Court: Hold the question a moment. The witness wanted to say something.

The Witness: That is not so, Mr. Saypol.

The Court: What did you want to say?

[fol. 1750] The Witness: Can I have the question, sir?

The Court: Give him the question.

(Question read.)

"Q. Do you remember when the agents arrested you and they took that out of your home?"

The Witness: The date on this case is May 20, 1948. I hold insurance in the International Workers Order, and they sent this can to me to ask me to solicit funds. I never solicited funds. I just made a contribution to them.

By Mr. Saypol:

Q. Do you know that the International Workers Order is now the subject of a lawsuit across the way in the Supreme Court?

Mr. E. H. Bloch: I object to the question upon the ground it is incompetent, irrelevant and immaterial and not related to the issues in this case.

By The Court:

Q. What is the International Workers Order?

A. An insurance organization, your Honor.

Q. Is it a public insurance company?

A. Right, sir.

By Mr. Saypol:

Q. Is it not a fact that it is a Communist organization exclusively?

Mr. E. H. Bloch: I object to the form of the question.

[fol. 1751] The Court: The form is all right.

Mr. E. H. Bloch: Do you want his opinion on it?

The Court: Well, he certainly doesn't want mine.

Mr. E. H. Bloch: He acknowledges that he belongs to it.

The Witness: That is right, sir.

Mr. E. H. Bloch: I think, if the Court please, we are really going off the issue.

The Court: Oh, no.

Mr. E. H. Bloch: All right. I will withdraw my objection.

The Court: Very well.

The Witness: I don't believe it is a communist organization.

Q. Is it not a fact that it is an organization whose members exclusively are members of the Communist Party?

Mr. E. H. Bloch: I object to that upon the ground that Mr. Saypol is bound by the witness's answer.

The Court: I don't know whether the first question was answered. You had better read back the question before and the answer.

(The following questions and answers read;)

"Q. Is it not a fact that it is a communist organization exclusively?

[fol. 1752-A] A. I don't believe it is a communist organization.

"Q. Is it not a fact that it is an organization whose members exclusively are members of the Communist Party?"

[fol. 1752] Mr. E. H. Bloch: I withdraw my objection.

The Court: Did you hear the question?

The Witness: I heard the question, your Honor. I don't know if it is a fact or it isn't a fact.

By Mr. Saypol:

Q. How did you join it? What were the circumstances of your joining it?

Mr. E. H. Bloch: I object to this upon the ground that we are going far afield, your Honor.

A. I don't remember.

Mr. E. H. Bloch: Pardon me. I think it is a collateral matter.

The Court: All right, he doesn't remember.

Q. When did you join it?

A. I don't remember when I joined it but I held insurance in it for many years.

Q. Who invited you to join it?

Mr. E. H. Bloch: I object to that.

A. I don't remember.

Q. How did it first come to your knowledge?

A. Somebody solicited my membership.

Q. Who was that comebody?

A. I don't remember.

Q. Is that somebody perhaps a member of the Communist Party?

A. I have no idea, no.

Q. Where were you solicited?

A. I don't recall.

[fol. 1753] Q. How many years have you been a member?

A. I don't know how many years I have been a member.

Q. What kind of insurance do you have in that order?

A. I hold $5,000. life insurance.

Q. Where is the policy?

A. The policy?

Q. Yes.

A. In my home.

Q. Whom do you send premiums to?

A. To the secretary of the Lodge.

Q. Where is his office?

A. I send it to his home address.

Q. Where is that?

A. Somewhere in Brooklyn. I don't remember.

Q. You mean you pay the insurance to the secretary of the Lodge at his home?

A. Well, he enters the insurance at the office.

Q. Hasn't the International Workers Order a headquarters, an office, a business office?

A. I guess it does.

Q. Where is that?

A. I don't know, sir.

Q. You say the policy is at your home?

A. The policy for myself and my wife is at my home.

Q. Will you be good enough to bring it with you when you come here next Monday morning?

A. I don't have it.

Q. Where did you say it is?

A. It was at my home.

[fol. 1754] Q. Could you arrange if I send somebody with you to get it so that we can have it here and look at it?

Mr. E. H. Bloch: Now, if the Court please, I would like to make this statement: I want to comply with Mr. Saypol's request, if possible. The Rosenbergs lived at 10 Monroe Street, and after Mrs. Rosenberg's arrest their home was abandoned. At any rate, I had the lease cancelled and their furniture was disposed of.

Mr. Saypol: Do you have the policy, Mr. Bloch?

Mr. E. H. Bloch: That is what I was going to say. It may very well be that Mr. Rosenberg's relatives brought some of his personal papers.

Mr. Saypol: Will you make an effort to get me the policy?

Mr. E. H. Bloch: I will try to get it for Mr. Saypol. This witness hasn't the policy.

Mr. Saypol: That is all I ask for, the policy; not a speech.

Mr. E. H. Bloch: Well, I don't want any implications that this witness was trying to conceal from this Court and the jury the policy itself.

By Mr. Saypol:

Q. Well, now, do you remember yesterday when you were examined by your counsel, you testified to your connection [fol. 1755] with the United States Army, with the Signal Corps, is that right?

A. That is correct.

Q. You weren't a soldier, were you?

A. I was not.

Q. You were a civilian employee?

A. That is right, sir.

Q. Do you remember being asked this question by your lawyer and giving this answer at page 1569:

"Q. How long did you continue working for the United States Government?

"A. Up until February 1945."

Do you remember that?

A. Yes, sir.

Q. Were you asked that question and did you give that answer?

A. I believe so.

Q. Then you were asked this question and you gave this answer.

"Q. Were you then separated from your job with the United States Government?

"A. I was."

Do you remember that?

A. That is right.

Q. What really happened to you, you were dismissed, were you not?

A. I was suspended.

Q. Were you then dismissed?

A. That is correct.

Q. And what was the reason?

A. It was alleged that I was a member of the Communist Party.

[fol. 1756] Q. That is, the Secretary of War in the interest of national defense directed that you be separated from the service?

Mr. E. H. Bloch: I object to the form of the question.

The Court: I will sustain the objection. You have his answer.

Mr. Saypol: Will your Honor just bear with me for a moment?

The Court: Yes.

Q. Do you remember on March 28, 1945, having been summoned before an officer of the Signal Corps and having been advised of the charges against you?

A. March? I don't recall the exact date.

Q. Is it not a fact that on March 28, 1945, you were summoned and in the presence of another officer of the Army, Captain Henderson, advised you of the action that was being taken against you to separate you from the service because of information reaching the office that you were a Communist Party member?

A. I can't recall the date exactly.

Q. Can you recall the fact of being advised, that that information that you were a member of the Communist Party was imparted to you?

A. I was down at Captain Henderson's office on one occasion.

[fol. 1757] Q. Is it not a fact that on that occasion you were told you were being removed from Government service because of the fact that information had been received that you were a member of the Communist Party?

Mr. E. H. Bloch: If the Court please——

A. It alleged——

Mr. E. H. Bloch: If Mr. Saypol wants a concession I will concede right now that this witness was removed from Government service upon charges that he was a member of the Communist Party.

The Court: All right.

Q. Were you a member of the Communist Party?

A. I refuse to answer on the ground that it might incriminate me.

Q. Is it not a fact that in February 1944 you transferred from Branch 16-B of the Industrial Division of the Communist Party to the Eastern Club of the First Assembly District under Transfer No. 12179?

A. I refuse to answer.

Q. Is that one of the charges Captain Henderson read to you?

A. That is.

Q. Did Captain Henderson advise you at that time that information had been received that while a student at City College you signed a petition for the granting of a charter to a chapter of the American Student Union, which has [fol. 1758] been reported to be or had been under the influence of communists?

A. He informed me.

Q. Is that the fact?

A. I don't remember.

The Court: Mr. Saypol, I suggest that you get to your destination on this. I don't think that we ought to pur-

sue this particular line in view of the witness's expression that he is going to assert his privilege on the entire line.

Mr. Saypol: Well, a moment ago, if the Court please, he admitted and testified from the stand that he had been a member of the American Student Union. Now he says he doesn't remember it a few minutes later.

The Court: Very well.

Mr. E. H. Bloch: I don't think the witness answered that.

The Court: Don't characterize the answer. Leave that for the jury. I think you understand the point very well, Mr. Saypol.

[fol. 1759] By Mr. Saypol:

Q. Is it the fact——

Mr. Saypol: I would want to ask your Honor for a recess in just a moment; I want to finish this topic.

The Court: All right.

Q. Is it not the fact that you were removed from that position for that reason—for these reasons, that you were a member and you were active in the party?

Mr. E. H. Bloch: I have so conceded, your Honor.

Mr. Saypol: All right.

Q. Now in connection with those charges——

The Court: Wait, let us get this clear. You did not concede, as I understand it, that he was removed because he was a member. You concede, as I remember, that he was removed because of the charges.

Mr. E. H. Bloch: That is correct.

The Court: Well, you just said that you will concede that he was a member.

Mr. E. H. Bloch: Oh, no, I do not mean that at all. I cannot make any such concession at all.

The Court: I just want to make sure that you understood what you are conceding.

Mr. E. H. Bloch: Well, I am conceding this, that this witness was removed from Government service upon certain [fol. 1760] charges that were preferred against him under the authority of the Secretary of War.

The Court: I understand that.

Mr. E. H. Bloch: And that one of those charges was that he was a member of the Communist Party.

The Court: Very well.

Mr. Saypol: The state of the record is that when I asked a direct question now the witness raises the question of privilege and refuses to answer.

The Court: That is right.

Q. Now at that time in response to these charges did you file an answer, Mr. Rosenberg?

A. I did.

Q. And do you remember having, on April 3, 1945, made the following statement in a communication to the Commanding Officer of the Newark Signal Corps, "3. On 28 March 1945, I appeared before the Intelligence Officer of the Newark Signal Corps Inspection Zone and copied excerpts from a written statement of charges read to me by Captain Henderson in the presence of two other officers.

"4. Those charges allege, first:

"'That you are a communist member. It is alleged that you transferred from Branch 16-B Industrial Division of Communist Party to the Eastern Club of the 1st Assembly District, N.Y., under Transfer No. 12179, in February 1944.'"

[fol. 1761] And then you go on to say: "I am not now, and never have been a communist member. I know nothing about communist branches, divisions, clubs or transfers. I never heard either of the Division or the Club referred to. I had nothing to do with the so-called transfer. Either the charge is based on a case of mistaken identity or a complete falsehood. In any event, it certainly has not the slightest basis in fact."

Did you make that answer to those charges, yes or no?

A. I refuse to answer a question on the contents of that letter.

Q. I ask you whether you made that answer to those charges as I have read them to you?

Mr. Bloch: May I advise the client, your Honor, that he should answer that question yes or no.

The Court: Very well.

A. Yes, I sent the letter in answer to those charges.

Q. Was that answer true at the time you made it.

A. I refuse to answer.

Mr. E. H. Bloch: Now I desire to advise the client that at this point he can exercise his privilege.

The Court: What privilege?

Mr. E. H. Bloch: I assume the privilege against self-incrimination.

[fol. 1762] The Court: Now I am not quite clear on what particular phase does he claim he is incriminating himself; is it on the basis of communism or on the basis of previous perjurious statement or something of that character?

Mr. E. H. Bloch: Not a previous perjurious statement, although I think that also might be a good ground. You see, a perjury only goes—let me put it this way——

The Court: That would not be a good ground.

Mr. E. H. Bloch: Yes, it might if it relates to another perjury that I think——

The Court: It would be directly related to this one.

Mr. E. H. Bloch: At any rate I didn't want to raise any question about perjury. This is a legal argument, I assume, but I think on the question of communism——

The Court: All right, let me hear the question read again.

(Record read.)

Mr. Saypol: I press for an answer.

Mr. E. H. Bloch: Now, if the Court please, may I be heard?

The Court: Yes.

[fol. 1763] Mr. E. H. Bloch: Is the witness exercising his privilege?

The Witness: I am, sir.

Mr. E. H. Bloch: All right, now I would like to be heard in support of sustaining of the privilege.

Mr. Saypol: If that is so perhaps the Court may desire to take a recess at this point and we will continue because it will probably take a few minutes.

The Court: All right. Ladies and gentlemen, you will be asked to return Monday morning at 10:30. In the meantime I want to wish you all a very happy Easter and a pleasant week end.

(Jury excused.)

(The following proceedings were had in the absence of the jury:)

Mr. Saypol: I would like to continue just a minute, if the Court is agreeable. I do not think it will make any difference.

The Court: Just a moment. Let us have some order in the court.

The Clerk: Spectators, please be seated.

The Court: The court is not in recess.

Mr. Saypol: Does the Court desire to hear the argument at this stage?

The Court: No, but I will say this, Mr. Bloch, that you might guide yourself accordingly. Mr. Saypol thinks that we might wait until Monday morning for a definite ruling. On this particular question I will overrule the privilege.

Mr. E. H. Bloch: Well, may I be heard then?

Mr. Saypol: I would like to hear what his position is.

Mr. E. H. Bloch: Yes.

The Court: Let me hear you.

Mr. E. H. Bloch: He is being asked now whether the answer to this question was false or true.

The Court: That is right.

Mr. E. H. Bloch: Now let us assume that he answers it was false.

The Court: Yes.

Mr. E. H. Bloch: If he answers that it was false he impliedly admits that he was a member of the Communist Party. If he impliedly admits that he was a member of the Communist Party, then, of course, I think he comes within the Blau case and the whole line of cases which finally culminated.

The Court: Oh, wait a minute now, let us get something clear. I understand the rationale of the Blau case. Now we can speak rather more candidly with the jury out of the [fol. 1765] room.

Mr. E. H. Bloch: Right.

The Court: And the Blau case was a question of contempt of Congress, and the witness there was asked whether she was—that is Patricia Blau—whether she was a member of the Communist Party, and the Court there held that it was merely a link in the chain which would ultimately end up in criminal proceedings, but you have a different problem here. Here you have a problem of a criminal case where a defendant has taken the stand and the question is, how much of his privilege against self-incrimination does he waive when he takes the witness stand?

Mr. E. H. Bloch: Correct.

The Court: That is your theory.

Mr. E. H. Bloch: Under the Johnson case.

The Court: Under the Johnson case.

Mr. E. H. Bloch: Right, and I say and I contend, your Honor, in the first place this type of question goes to collateral matter. The charge here is espionage.

The Court: Yes.

[fol. 1766] Mr. E. H. Bloch: What you are really trying to do at least.

The Court: Oh, no. Let us get something clear there. I am not for a moment—I wouldn't entertain this if I believed it was collateral; I wouldn't entertain it for the purpose of impeaching his credibility as a witness. I believe that in view of the foundation which the Government has laid that it is relevant.

Now, the question is whether or not I should sustain the privilege. I haven't been called upon to do so.

Mr. E. H. Bloch: I understand.

The Court: I think Mr. Saypol has been very gracious in not pressing the question and I think he probably exercises good judgement. Whether I would sustain the privilege or not will remain to be seen, if it were pressed.

Mr. E. H. Bloch: I understand.

The Court: But you are now on a different subject entirely, and he is asking him a question as to whether something he said previously is true or false, and I think I see your point. Your point is that if he says it is false, he is in effect admitting that he is a member of the Communist

Party, so it falls in the same category that the other [fol. 1767] question did. We won't rule on that now. I ask you to think about that over the weekend.

Mr. E. H. Bloch: May I just make this additional statement, Mr. Saypol, so that you get my complete state of thinking at the present time?

With all the limitations of the assertion of privilege, by reason of the fact that this defendant has taken the stand and therefore comes within the purview of the Johnson doctrine and the cases following, I also think that on this question of possible perjury, his assertion, is well founded, for this reason:——

The Court: No, if that were so, then any witness, ever caught in an inconsistent answer, will be able to say, "Oh, no, I assert my privilege", because it might incriminate him.

Mr. E. H. Bloch: No, but you see, it is no defense to try to hide behind any perjury, where the perjury is committed in the very proceeding where the privilege is asserted. But here he is asking him to admit to a possible perjury in some other transaction.

The Court: No.

Mr. E. H. Bloch: In other words, your Honor, suppose Rosenberg were on the stand and I asked him, "Didn't [fol. 1768] you commit perjury in 1940, when you swore before this and this and this?"

The Court: No, it would be something directly related to this case, and that it would be something upon which the jury can determine whether he is telling the truth, whether he is telling it today or whether he is telling the truth then, and something that can be submitted for their determination, and in that I think it relates to the case.

But I want to ask you a question: Do you agree—do I hear something sotto voce there?

Mr. E. H. Bloch: Mr. Phillips is trying to help me out.

The Court: It is not very sotto and it is not very voce.

Do I understand that you are in agreement with the rationale of the Johnson case, and that is, when a defendant takes the witness stand he may be cross-examined on any matter which is relevant to the issues, even if the answer will tend to incriminate him?

Mr. E. H. Bloch: I think that generally speaking you have stated the law. What my contention is, and of course here you and I, I suppose, don't see together, is that this particular question relates to the commission of an independent crime, not related to it.

[fol. 1769] The Court: I get your point and I will not say that it is wholly without merit. I think there is some merit to your argument, and I am sure Mr. Saypol and his satellites at the counsel table will think about it over the weekend.

Mr. E. H. Bloch: I will, too, your Honor. I have got some law on it. I did some research before the trial. I expected that this question might come up and I tried to prepare myself.

The Court: I want you to know that the Court did a substantial amount of research on the problem, too, in anticipating the question.

Mr. E. H. Bloch: I have no doubt about that.

The Court: And I dare say that it is not one of these principles of law that you can point your finger at and say, "There is the answer." You seem to have it in one case; then it seems to be dissipated by something else the Court says in another case.

Mr. E. H. Bloch: I think that is correct.

The Court: And I think that it calls for a great deal of caution on the part of the trial judge, so that he doesn't jeopardize a case as important as this with a ruling that might prove to be error.

The Court: Well, at any rate, we will be here Monday [fol. 1769-A] morning. Pleasant weekend.

Mr. Saypol: I am prepared to press the question.

(Adjourned to March 26, 1951, at 10.30 a.m.)

[fol. 1770] New York, March 26, 1951; 10.30 o'clock a.m.
Trial resumed.

(In the absence of the jury.)

Mr. Collenburg: I am here on behalf of the Mexican Government. Last week a subpoena du-es tecum which I have here was served upon the Consulate here to produce certain records in the Court. The Government asked me to appear

specially to protest this service and to ask that the subpoena be vacated.

At the same time the Ambassador says that if a proper request is made for these documents through official channels he will be very happy to comply with such request,

The Court: What is your name?

Mr. Collenburg: Mr. Collenburg of Hardin, Hess & Eder.

Mr. Kuntz: It becomes academic, your Honor. I am not going to even introduce it.

The Court: You have no objection to my dismissing it? [fol. 1771] Mr. Kuntz: No.

The Court: The subpoena is being withdrawn.

Mr. Saypol has asked that we delay the opening of court this morning. He is engaged before a grand jury.

(Conference at the bench between Court and counsel.)

(The following took place at the bench.)

The Court: Do I understand that the requests to charge that have been submitted by E. H. and Alexander Bloch on behalf of Julius Rosenberg and Ethel Rosenberg are joined in by you Mr. Phillips, on behalf of your client Sobell?

Mr. Phillips: Yes, with the same force and effect as though submitted by us.

The Court: Where are your requests?

Mr. Lane: They are probably on the way down your Honor.

(Mr. Saypol appeared.)

Mr. Saypol: Will your Honor excuse me for my apparent dilatoriness? I was before the grand jury.

The Court: Yes, I so stated before.

(The following took place in the presence of the jury.)

The Court: I am sorry for the delay this morning, but [fol. 1772] we had a little lawyer talk. I am sure you understand.

JULIUS ROSENBERG, resumed the stand.

Mr. Saypol: Shall I proceed?

The Court: Yes.

Mr. Saypol: At the recess on Friday, if the Court please, the posture of the case was this: There was before the Court my motion to direct the witness to answer a question in relation to his prior denial of membership in the Communist Party and his assertion here of the privilege against self-incrimination.

I have given some consideration to that over the weekend and premised on the main issue in the case as charged in the indictment and an expression of the same character as that of the Court to the effect that this issue ultimately should be resolved by the jury, as to the guilt or innocence based on the indictment rather than on the collateral, or I should say the related but not primary issue of membership in the Communist Party, I will withdraw my request at this time, and I do so also in the interest of expedition.

The Court: Very well.

[fol. 1773] Cross examination continued

By Mr. Saypol:

Q. Mr. Rosenberg, do you know a man by the name of Oscar Vago?

Mr. E.H. Bloch: If the Court please, I object to the question as incompetent, irrelevant and immaterial unless the prosecution is seeking to elicit from this witness some testimony that would relate this particular individual directly to the issues in this case.

The Court: I don't know whether it will or not, and if you are going to say to me now, Mr. Bloch, that the Government cannot ask this witness any questions which will have some bearing upon credibility I am going to tell you that you are wrong.

Mr. E.H. Bloch: Well, if it is for the purpose of attacking credibility I will withdraw my objection. I just don't know what it is for.

The Court: Let us wait and see.

Mr. E.H. Bloch: May I withdraw my objection for the moment then.

[fol. 1774] A. There was a man by the name of Oscar Vago at West Street jail.

Q. Is that the first time you knew him?

A. That is the first time I knew him.

Q. The first time you knew anything about him?

Mr. E.H. Bloch: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled. How do you know?

Mr. E.H. Bloch: He just said it was the first time he knew him.

The Court: Well then, you are not objecting on the ground it is immaterial. You are objecting on the ground that he has already answered the question.

Mr. E.H. Bloch: All right, he answered.

The Court: Overruled.

Mr. E.H. Bloch: I respectfully except.

A. I met him at West Street jail.

Q. Did you ever hear about him before?

A. No, sir; I never did.

Q. Did you ever talk to anybody about him before?

A. No,sir.

Q. You testified on direct examination that on one occasions when the Sobells visited your home at 10 Monroe Street, there was present a woman by the name of Vivian Glassman?

A. That is correct.

[fol. 1775] Q. How long have you known her?

A. I don't know the exact length of time, but she was introduced to my wife and myself by Joel Barr, a classmate of ours.

Q. Where was the introduction made?

A. I cannot recall, Mr. Saypol.

Q. When was the introduction made?

A. I don't remember the exact year, but it has been many years ago.

Q. At what kind of a gathering was the introduction made?

A. I don't believe it was a gathering, sir. It may have been at the union headquarters.

Q. Since you first met her, how often did you see her?

A. In recent years? Will you specify the time, Mr. Saypol?

Q. You tell me when you first met her, then, if you can't answer that question.

A. Well, I told you that I don't know exactly when I first met her.

Q. Well, you say it might have been at union headquarters, and I think that you had no association with the union before 1940 or '41; is that so?

A. I had an association with the union since 1939, the year I graduated.

Q. All right, since 1939 how often have you seen her?

A. On and off?

Q. Once a year? Twice a year? Fifty times a year? How often?

A. A number of times one year, more often the next [fol. 1776] year.

Q. Where did you see her aside from your home?

A. Well, she was Joel Barr's sweetheart, and he brought her over to my house a couple of times. I might have seen her at a musicale; I might have seen her at his house.

Q. When did Joel Barr leave the country?

A. I don't know exactly, sir, but it was either the end of '47 or the beginning of '48.

Q. Since that time have you seen Vivian Glassman?

A. Yes, I have.

Q. How often?

A. She came over to our house on a number of occasions.

Q. Did you see her any other places?

A. I believe she was over my shop once.

Q. Any other places?

A. I don't recall, sir.

Q. Did you ever see her at Communist clubs——

Mr. E. H. Bloch: Objected to.

Q. —Communist gatherings?

Mr. E. H. Bloch: Objected to as incompetent, irrelevant and immaterial.

The Court: Well, strike out "Communist gatherings;" did you ever see her at any gatherings?

The Witness: I only saw her at my house, as I said, once [fol. 1777] at my shop; I believe, and that is about all I can recall.

Q. How often did you see her in 1950?

A. I would say she has been over to our house a number of times.

Q. How often?

A. I can't be specific. I would say a number of times.

Q. When was the last time that you saw her?

A. I don't recall. It may have been a couple of months before I was arrested.

Q. Could it possibly be a couple of weeks before you were arrested?

A. I don't know, sir.

Q. Could it possibly be more than a week before you were arrested?

A. I can't recall.

Q. What did you talk to her about the last time you saw her?

A. Well, she is a social worker and my oldest boy has been very emotionally disturbed for quite a number of years, and she used to work at the Jewish Board of Guardians, and I discussed the problem of my oldest boy with her.

Q. When did that discussion take place?

A. Almost every time I saw her.

Q. As the result of those discussions, did you subject your boy to any treatment?

A. Yes, we did.

Q. Where?

A. At the Jewish Board of Guardians.

Q. What else did you talk to Vivian Glassman about?

[fol. 1778] A. I had nothing else to talk to her about but that.

Q. Did you ever give her any money?

A. No, sir; never did.

Q. Did you ever send her on a trip to Cleveland?

A. No, sir; never did.

Q. You are positive of that?

A. I am positive.

Q. Did you ever hear of any discussion of that before?

A. No, sir.

Q. Is this the first time you heard any suggestion that you gave her some money?

A. That is correct.

Q. Isn't it the fact that you gave her $2,000. to take out to somebody in Cleveland?

A. That is not the fact, Mr. Saypol.

[fol. 1779] Q. You are positive of that?

A. I am positive.

Q. When did you first hear any discussion about that?

A. You just mentioned it right now.

Q. Never heard about it before?

A. I might have read it in the newspapers, I don't know.

Q. When?

A. I don't know.

Q. How long ago, since your arrest or before your arrest?

A. Mr. Saypol, I read the newspapers a few weeks ago in reference to a case that you tried to ask me a question about. I believe that is the time I read it, a week or two ago.

Q. And what newspaper, do you remember?

A. The New York Times.

Q. And what was the story as you read it?

A. I am sorry, sir, I can't remember.

Mr. E. H. Bloch: Wait, just a second. I object to this entire line of questioning.

The Court: He says he doesn't remember. No, no, I am not going to sustain your objection to the entire line. I do not know whether it is relevant or not.

Q. You say——

Mr. E. H. Bloch: Just pardon me, your Honor. I want to make my objection specific. I submit that on this line of questioning the prosecutor is making this witness his own. [fol. 1780] This was not covered by the direct, and I submit that the question has been asked and answered at least on three or four occasions.

The Court: Oh, Mr. Bloch, come, come. You know that in cross-examination a cross-examiner has the right to question the witness not only about relevant matters but about matters which go to credibility.

Mr. E. H. Bloch: That is correct but when that happens, your Honor, then I say he is bound by the witness' answer and I say that the witness has answered at least three or four times with reference to Vivian Glassman——

The Court: Objection overruled.

Mr. E. H. Bloch: —and I say this is obliquely a repetition.

The Court: Very well, your objection is overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Now you say you read it in the New York Times, is that right?

A. I don't know if I read exactly that which you mentioned—you asked me a question if I gave her money and I said I did not.

Q. You said you read something in the newspapers about the fact that you had given Vivian Glassman money.

A. Not that I had given.

Q. I beg your pardon, I do not hear you.

[fol. 1781] A. I did not say that.

Q. What did you say?

A. I said that I did not give her money.

Q. You say you did not read it in the New York Times. Now where did you read it?

A. I said I read about the question of Vivian Glassman, as a case, a recent case in the New York Times, that is all I said, sir.

Q. Didn't you say something about in the New York Times, about a question that I was going to ask you, about giving money to Vivian Glassman?

A. I did not say that. I did not mean that to be my answer.

Q. You say now you didn't say it or you say now you said it and you did not mean it? Which is it?

A. I say that I did not say I read it in the newspapers that Vivian Glassman—that I gave Vivian Glassman money.

Q. Where did you hear about it then?

A. You just spoke about it in the court today.

Q. And so I ask you again, is that the first and only knowledge that you have about any suggestion that you gave Vivian Glassman money?

A. That is the only knowledge—

Q. (Continuing.) To go to Cleveland?

A. —that I had that I gave money to Vivian Glassman [fol. 1782] to go to Cleveland.

Q. Never heard about it before and never read it before?

A. Never did.

Q. You know the Sidoroviches, don't you?

A. Yes, I do.

Q. Do you know a man by the name of Alfred Saurent?

A. Yes, I do.

Q. When did you see him last?

A. Possibly the early part of 1950 or the latter part of 1949.

Q. Did you possibly see him in May or June of 1950?

A. I don't recall the exact time I saw him but I don't think I saw him that late in 1950.

Q. Where did you see him?

A. I saw him at his home.

Q. What did you talk to him about?

A. I went to his home to borrow some money from him.

Q. How much did you borrow from him?

A. $300.

Q. When was that.

A. The early part of 1950.

Q. How did you get it—excuse me, did you get it?

A. Yes, I did.

Q. By cash or check?

A. By cash.

Q. Did you pay it back to him?

A. No, I did not.

Q. So you still owe him $300.

A. I owe him more than that.

Q. How much do you owe him?

A. $400.

[fol. 1783] Where did you first meet him?

A. I met him when he was introduced to me by his friend, Joel Barr. I met him in an apartment they were sharing in Greenwich Village.

Q. Where was that?

A. I don't recall the exact name of the street. It begins with an M. It is either——

Q. 65 Morton Street, isn't it?

A. Morton, that is the place, Morton Street.

Q. You couldn't remember that, could you?
A. You just asked me and I told you.
Q. How often had you been to Saurent's home on Morton Street?
A. On a number of occasions.
Q. How often?
A. Not very often.
Q. Alone or with your wife?
A. I believe on one occasion my wife went with me.
Q. Were you over there with Sobell?
A. No, sir.
Q. Were you over there with Elitcher?
A. No, sir.
Q. When did you see Saurent last, did you say?
A. In 1950.
Q. Where is he now, do you know?
A. In Ithaca.
Q. How do you know that he is in Ithaca now?
A. Well, I saw the name of his wife on the witness list, and the address is given as Ithaca, so I figured he is still [fol. 1784] in Ithaca.
Q. You have no other knowledge of his whereabouts, is that it?
A. No, I have no way of knowing.
Q. Don't you know that he is in Mexico?
Motion for mistrial and denial thereof.

Mr. E. H. Bloch: I object to that upon the ground that it is incompetent, irrelevant and immaterial, and highly inflammatory. I move for a mistrial.
The Court: Denied.
Mr. E. H. Bloch: I respectfully except.
Mr. Kuntz: We join in that application, if your Honor please.
The Court: Both motions are denied.
I don't know what the excitement is over, asking whether a witness is in Mexico.
Mr. Kuntz: Now all I have heard so far, although it hasn't concerned us actually—I mean directly—is that by implication, "Do you know this one, did you meet that one, did you see that one"?

Now I might have met Costello and seen him and it doesn't mean a thing—

The Court: And then again it might mean something, too.

Mr. Kuntz: Well, I know but I say a question of that kind is clearly prejudicial. A person says "Do you know he is in Mexico"?; especially when there is no evidence in [fol. 1785] this case that he is in Mexico.

The Court: There is rarely a question that can be asked that isn't prejudicial.

Mr. Phillips: May I ask, if your Honor please, asking this man questions that are purely extraneous to the issue—

The Court: How do you know?

Mr. Phillips: Just a moment.

The Court: How do you know?

Mr. Phillips: Just a moment—in the direct case of the Government, that man's name about whom he is interrogating this witness, never was mentioned. Consequently, in cross-examining him he is cross-examining him as to something which heretofore was not mentioned by anybody in this case.

Now just a moment. To cross-examine him about someone that was never mentioned in this case and then try to discredit that someone by pointing out that that someone is somewhere in Mexico, when all through the trial the word "Mexico," created an atmosphere prejudicial to the defendants, is leading the case by the Government into a channel, and I say deliberately prejudicial to the defendants, knowing that what he is asking is irrelevant to the issues.

The Court: Are you finished?

[fol. 1786] Motion for mistrial and denial thereof.

Mr. Phillips: And therefore I ask for a mistrial.

The Court: Your motion is denied.

Mr. Phillips: I respectfully except.

The Court: Proceed.

By Mr. Saypol:

Q. Do you know a girl or a lady by the name of Carol Dayton?

A. I don't recall that name.

Q. Never heard of it before?

A. I may have, I may not have.

Q. Coming back to the Sidoroviches, was it your testimony on direct that you had no recollection of whether or not Ann Sidorovich was at your house in January 1945 at the time of David Greenglass' furlough when you entertained the Greenglasses at dinner?

A. That's right, sir.

Q. You mean by that that it is possible she was there?

A. I can't recall if she was or wasn't there. She may have been there.

Q. Before that time the Sidoroviches had lived in Chappaqua, New York, hadn't they?

A. That is correct.

Q. I think you testified that they moved to Cleveland?

A. I testified that I received a few Christmas cards from [fol.1786-A] them, with a Cleveland address on them.

Q. A few Christmas cards?

A. That is right.

Q. That means on successive Christmases—at least two—you received Christmas cards?

A. That's correct.

[fol. 1787] Q. Don't you know, Mr. Rosenberg, that the Sidoroviches didn't move to Cleveland until December, 1944?

A. I don't know when they moved there—wait a minute, Mr. Saypol.

Q. Don't you know in 1944—

A. Mr. Saypol, I am talking about—when I said on two Christmases, I am talking about up to 1950; I am not talking up to 1945.

Q. Well now, you say in spite of the fact that the Sidoroviches moved to Cleveland in December, 1944, there was still a possibility that Mrs. Sidorovich was at your house in January, 1945?

Mr. E. H. Bloch: Hold it.

Q. (Continuing) When the Greenglasses were there?

Mr. E. H. Bloch: Now, if the Court please, I object to this question upon the ground that it is premises upon a

state of facts not proven. There is no testimony here that the Sidoroviches moved to Cleveland in December, 1944.

The Court: Well, ask the question. Ask whether the Sidoroviches did.

Q. Once again I ask, isn't it a fact that the Sidoroviches moved to Cleveland in mid-December, 1944?

A. I don't know if it is or it isn't a fact, Mr. Saypol.

[fol. 1788] Q. When did you receive the first Christmas card from them?

A. I don't recall when. I received a couple.

Q. Do you know a man by the name of Dave Engels or Engelson?

A. Yes, I believe I do.

Q. Where did you first meet him?

A. I don't recall when but I know he lives in Knickerbocker Village.

Q. What was his business?

A. I have no idea, sir.

Q. Do you know whether he had any outside activities?

A. He is not a friend of mine, Mr. Saypol. I just met him.

Q. How often did you see him?

A. When I would bunk into him in Knockerbocker Village.

Q. Is that the only place you ever saw him?

A. The only place I recall seeing him.

Q. Could there be other places?

A. I don't know.

Q. Think hard, if you will, and say whether there is another place where you might have met him.

A. That is all I can recollect.

Q. Did you have occasion in 1950 to go to Elmhurst, Queens?

A. No, sir, I don't recall going to Elmhurst, Queens.

Q. Do you recall whether or not you were in Elmhurst, in Queens on Sunday, February 5, 1950?

[fol. 1789] A. I don't recall being there.

Q. Just going to another subject for a moment, you testified in response to your lawyer's questions regarding the time that the agents called upon you and then you came

here to this building and were interviewed. That took place on Friday, June 16, 1950, didn't it?

A. I don't know the exact date. I know it took place on a Friday.

Q. The day after David Greenglass was arrested, wasn't it?

A. That is correct.

Q. He was arrested on June 15th.

A. Then it must have been the 16th.

Q. You were interviewed by Messrs. Harrington and Norton?

A. And another individual.

Q. Then you were arrested on July 17th, about a month later, weren't you?

A. That is correct.

Q. Now, in the intervening months did you see either Mr. Harrington or Mr. Norton or both of them in the vicinity of your shop or your home?

A. I believe one day outside my shop I saw Mr. Harrington looking in.

Q. Did you feel then that you were under su-veillance?

A. I don't know if I was or was not.

Q. Did you think it was unusual to see him looking up at your house?

A. I said outside my shop, Mr. Saypol.

[fol. 1790] Q. Excuse me, didn't see him at your house, but outside your shop? Did you think it was unusual to see an agent of the FBI, after he had talked with you at an interview, looking up at your shop?

A. That is his business, Mr. Saypol, not mine.

Q. What did you think about it?

A. The possibility he was looking for something.

Q. Somebody else?

A. I have no idea, sir.

Q. Not for you?

A. I have no idea what he was looking for.

Q. You were not concerned about his presence outside your shop?

A. No, I wasn't concerned, Mr. Saypol, because I wasn't guilty of any crime.

By the Court:

Q. The question is, did you think about what he was doing there?

A. No, it didn't enter my mind. It was his business.

Q. The fact that you saw an FBI agent looking into your place of business—

A. He wasn't looking; he was across the street from the Pitt Machine works and he was walking by nonchalantly looking in.

Q. That was the same agent who had talked to you?

A. Yes.

Q. You say it made no impression whatsoever upon you?

A. It didn't concern me.

[fol. 1791] Q. I say, it made no impression on you?

A. I know he may have been looking for something.

Q. You didn't think it had anything to do with you?

A. It might have and it might not have, but it didn't concern me.

Q. I am asking you whether you thought it had anything to do with you.

A. Maybe yes and maybe no. It didn't enter my mind as to what his purpose was.

Q. Is that the best answer you could give?

A. Yes.

Q. Maybe yes and maybe no?

A. Yes.

By Mr. Saypol:

Q. You didn't say, perhaps, "Harrington, what are you doing here? Have you got nothing better to do than to hang around here?"

A. It is not for me to tell the FBI what to do, Mr. Saypol.

Q. You know at that time your brother-in-law, David Greenglass, was under arrest?

A. That is correct.

Q. When you came home that night did you say to your wife, "You know, that agent is snooping around again"?

A. No.

Q. Never told her about it?

A. I don't recall if I did or I didn't.

Q. Let us have a little talk about this console table. Is your best recollection that you bought that at Macy's in [fol. 1792] 1944 or 1945?

A. That is about the best I can recall, sir.

Q. Do you remember what day of the week it was that you bought it?

A. Well, I can't recall. It is too many years ago. My recollection is hazy about events.

Q. Suppost you describe the table to us, what color it was.

A. Well, the table was a dark brown.

Q. Mahogany?

A. I don't know if the wood was mahogany.

Q. Mahogany-colored?

A. That is right.

Q. Yes.

A. The table was—the top of the table was about three feet by two feet.

Q. You mean three feet wide?

A. That is right, by——

Q. By two feet from front to back?

A. Right. It had a piano hinge in the center, and the table could open up double. Across the inside of the table there was a bar with a hole in it and there was a little wooden boss that had two holes in it that held the top of the table to the bar, so that when the table was—I mean the cover of the table would swing around at right angles, you could open the table double.

Q. You mean it was an extension table?

A. It wasn't an extension; it was hinged over the top cover of the table.

[fol. 1793] Q. About how high did the table stand?

A. As high as the ordinary eating table. The same height as the table over there (indicating).

Q. How many people could sit around it?

A. When it was opened, you could have about six people sitting around.

Q. When it wasn't used for eating, where was it kept in your apartment?

A. Well, in the beginning days when we first had it, when we had the other table before we shipped it out to California, it was kept in the foyer, and then in the last few years,

I would say the last four years, we used it to eat on, and particularly the last couple of years it had a lot of use for eating on. The top of the table kept falling off because the two wooden screws that held the studs at the top of the table stripped the threads and I used two little match sticks in there to try to keep it tightened.

[fol. 1794] Q. That was the hinged back that used to stand up against the wall, was it not?

A. No*t*, it didn't. Only in the beginning, we used to keep it as a show piece, because it was one of the nicest pieces of furniture we had in the house.

Q. It was the only new piece you had in the house, as a matter of fact?

A. That is correct.

Q. Now, I have got a couple of pictures of tables here, Mr. Rosenberg——

Mr. Saypol: Will you mark this for identification, please?

(Marked Government's Exhibit 28 for identification.)

Mr. Saypol: May I have leave ultimately to substitute a photostat of this exhibit, if the Court please? I borrowed it.

Q. Will you look at these illustrations, Mr. Rosenberg, and tell me which of them most closely resembles the console table you bought for $21. in Macy's, in 1944 or in 1945?

The Court: Is that 28 for identification?

Mr. Saypol: Yes.

Mr. E. H. Bloch: I wonder, Mr. Saypol, whether you would permit me to look at that, so that I can follow?

Mr. Saypol: Certainly.

Q. I don't want you to think that I am trying to show [fol. 1795] you the exact table, Mr. Rosenberg. I just want you to tell me which of those is a console table. That is what I wanted to know.

A. Well, I looked at one notation here. It says "console table," so that is the one that is a console table. But it was much plainer looking than this, Mr. Saypol. This has all the frills and curves in it. It was straight over here (indicating); straight over there (indicating); I don't think it had all these (indicating).

Mr. Saypol: May the record show that the witness' testimony with regard to the table refers to the one bearing the pencilled figure 1.

Q. Well now, No. 2 also is a type of console table, is it not?

A. That's right.

Q. Whereas the other illustrations are those of what you have called "a leaf" table, aren't they?

A. They are leaf tables.

Q. A leaf table is the kind of table you got from the neighbor, that you ultimately shipped back to California.

A. One table.

Q. One broke and one you shipped back?

A. That's right.

Q. At least one and two are illustrations of the type of console table that you have in mind, that you bought in Macy's for $21.?

A. That's right, sir.

[fol. 1796] Mr. Saypol: I offer this in evidence. Mr. Bloch has seen it. I take it there is no objection.

The Court: All right.

(Government's Exhibit 28 for identification received in evidence.)

Mr. Saypol: May I put this before the jury?

The Court: Yes.

(Exhibit shown to jury.)

Q. Now, you say that the illustrations, No. 1 and 2 represent the console table?

A. Doesn't represent it.

Q. Look like the console table that you bought?

A. Illustrations 1 and 2 is a console table.

Q. Well, you say that your table was much plainer than these?

A. That's right; looked different than these.

Q. Now, do you remember who the salesman or the saleslady —?

A. Mr. Saypol, I can't remember a thing like that.

Mr. E. H. Bloch: May I make a statement at this time, Mr. Saypol, with regard to the console table.

The Court: No, no.

Mr. E. H. Bloch: All right.

The Court: This is cross-examination, Mr. Bloch.

The Witness: Mr. Saypol, could I say something on [fol. 1797] that? I have asked my attorneys to have the Macy's people go through their records and files, and I am sure if the Government request- them they will find a sales slip with my signature on it, when I signed in Macy's in 1944 or '45, for that console table, and I believe I bought something else at that time, too. It was shipped to my house.

The Court: What did you have, a D.A. account, or cash.

The Witness: No, I had to pay cash.

The Court: Why would your name be on a sales slip?

The Witness: Because I had to give him the money, and there was—I had to have some notation like a receipt, that I paid the money. I believe the salesman brought over one of these folding booklets, and I signed one of these folding booklets.

The Court: Was it delivered, or did you take it with you?

The Witness: It was delivered. It was too big for me to take with me.

Q. Do you know, Mr. Rosenberg, that we have asked Macy's to find that check and they can't find it?

Mr. E. H. Bloch: That is not so, your Honor. That is [fol. 1798] the statement I was going to make.

Mr. Saypol: I am responding to what Mr. Bloch said and what the witness has volunteered.

The Court: Mr. Bloch, please be seated. You will have your chance on redirect.

The Witness: Your Honor, I have requested my attorneys to find that receipt.

The Court: You said that before.

The Witness: And my attorneys told me that Macy's cannot find the receipt unless I gave them a number or copy of receipt that I had, because it is filed by number.

The Court: All right, go ahead.

The Witness: Now, I feel that if somebody looks through all the numbers through those years, they will find one for Julius Rosenberg, and it is worth finding if it is such an important issue.

Q. Now, Mr. Rosenberg, where did you keep that table in the house?

A. In the living room, sir.

Q. Which wall, the one near the kitchen and bedroom, or the opposite wall?

A. Well, the one that was near the kitchen.

Q. That would be the south wall, would it not?

A. I can't specify whether it is the south wall. It is the one near the kitchen.

[fol. 1799] Q. Well, you know the location of your apartment. When you come in, you face in, coming down a long hall?

A. That's right.

Q. Let's walk down the long hall toward you.

A. That's right.

Q. And then when one opens the door, the entrance to your apartment, 11G, is it?

A. G-11.

Q. One turns left?

A. That is correct.

Q. And the window faces towards the East River?

A. That's right.

Q. So that the entrance to the apartment is located——

Mr. Saypol: May this be marked?

(Marked Government's Exhibit 29 for identification.)

Q. The entrance to the apartment is located on the west of the apartment, the westerly end of the apartment?

A. That's right.

Q. Is that right? A. That's right.

Q. And still facing the entrance to the apartment, on the southerly side of the apartment, walking left, is the bathroom and the bedroom?

A. That's right.

Q. Is that right?

A. That's right.

Q. The bedroom is at the most southerly part of the apartment?

A. That's right; it would be the south wall.

Q. And to the north of that is the entrance to the living [fol. 1800] room; is that right?

A. Correct.

Q. And then continuing east in the living room, at the far end is the kitchen, also on the southerly end of the apartment. I will show you Government's Exhibit 29 for identification, and you follow it from there. That is a sketch of your apartment, isn't it, blueprint or layout of your apartment (showing to witness)?

A. That's right.

Q. Now then, will you mark with a pencil the place where the console table was kept?

Mr. E. H. Bloch: Do you want to offer that in evidence, Mr. Saypol? There is no objection.

The Court: He can do it after. There is apparently no objection to it, is there, Mr. Bloch?

Mr. Bloch: No, sir.

A. It was kept——

Q. In other words, you say it was kept just about the entrance of the kitchen?

A. That's right.

Q. Is that where it was always kept?

A. Except when we ate and had more people, we would bring it away from the wall so we could sit behind it.

Mr. Saypol: May this be received in evidence, now?

(Government's Exhibit 29 for identification received in evidence.)

[fol. 1801] Mr. Saypol: As Mr. Bloch has no objection, we will mark the various poles, north, east, west and south.

Mr. E. H. Bloch: I have no objection.

Q. Now, let me see, Mr. Rosenberg, this would be east, wouldn't it, where I put the letter "E"? The East River is over here (showing to witness)?

A. Over here (indicating).

Q. That's right, this is east here; the East River is here. I will mark that, too; is that right?

A. That is correct. This faces the court.

Q. That's right; we will say "court" here, too. Now, this is west here; is that right?

A. That's right.

Q. We will call this "south"—no——

A. That would be north.

Q. That would be north; that is right. You have a good sense of direction.

A. The only way I can tell is with my eyes on the right.

Q. This would be south here, and you say that this table was kept approximately to the southerly wall of the living room, near the entrance of the kitchen; is that right?

A. Yes. Now, let me explain something. From time to time, we shifted furniture around and we might have put [fol. 1802] it in different parts of the room. It might have been kept here once (indicating); I don't remember. We shifted—

Q. You mean, near the window, but it was always in the living room?

A. Always in the living room.

Q. When did you see it last in the living room?

A. When I was arrested, sir.

Q. When you were arrested?

A. That's right.

Q. Now, you bought this table in 1944 or 1945, during the war; is that right?

A. That is correct sir.

Q. Did you have any trouble finding any furniture at that time?

A. That was on the floor of Macy's. There was a big display, many little tables were on the floor.

Q. The place was full of little tables?

A. That's right.

Q. Don't you know, Mr. Rosenberg, that you couldn't buy a console table in Macy's, if they had it, in 1944 and 1945, for less than $85.?

A. I am sorry, sir. I bought that table for that amount. That was a display piece, Mr. Saypol, and I believe it was marked down.

Q. You mean the place was full of marked-down tables?

A. That is correct, sir.

Q. Did you ever have a Leica camera?

A. No, sir.

Q. Never did?

A. No, sir.

[fol. 1803] Q. Did you ever borrow one from anybody?

A. No, sir.

Q. Did you ever use one?

A. No.

Q. We had some talk about some watches here; how many watches did you have when the agents arrested you?

A. I don't recall the exact number, sir. There were several of them.

Q. About 10?

A. I don't think there were that many.

Q. Two?

A. No, there were more than two.

Q. There was one of your wife's; is that right?

A. That is correct.

Q. Where did you buy that?

A. I bought that watch in 1945, while I was working at Emerson Radio.

Q. From whom did you buy it?

A. I bought that watch from a fellow who goes around as a peddler and sells watches. He used to come around regularly when people were paid on Fridays and people would buy gifts, costume jewelry; he sold watches and things of that sort.

Q. Is that the only watch you ever bought for your wife?

A. That is correct, sir.

Q. What was the occasion for buying it; any special occasion?

A. Well, her birthday was—it was just a little while [fol. 1804] before her birthday and I figured I would want to give her a birthday present.

Q. How much did you pay for it?

A. I got a very good buy from that man on the watch. I believe it was somewhere around $30.

Q. Was anybody present when you bought it from him?

A. Well, there were other fellows who were buying watches.

Q. Did anybody else see you buying the watches from him?

A. Sure, people working at Emerson Radio used to buy that from those people.

Q. Who saw you buy the watch, anybody that you can name?

A. I can't remember anybody.

Q. How did you know it was a good buy?

A. It looked good, and the people at Emerson, who bought watches from this man, said, "The man gave you a very good buy."

Q. Is that the first time you ever bought a watch?

A. No, sir.

Q. Is that the first time you ever bought your wife a watch?

A. That is correct.

Q. What color was it, white or yellow?

A. I believe it was yellow, sir.

Q. Did you take it out first to show to your wife, to see if she liked it, before you bought it?

A. No, sir.

Q. Just the same day that you saw it, you bought it for [fol. 1805] her?

A. That is correct.

Q. Haven't you got a brother-in-law in the wholesale jewelry business?

A. That is correct.

Q. What is his name, Sam?

A. That's right.

Q. Didn't he sell watches wholesale?

A. Yes, that's right.

Q. You didn't think of buying it from him, did you?

A. You see, Mr. Saypol, I couldn't buy very many things from him. Every time I asked to buy something from him, he was always too busy.

Q. Is he another one that you always had heated arguments with?

A. No, sir.

Q. You told us that on a Saturday morning in 1945—you fixed it as April—you took a ride to Washington to see a man by the name of Dickstein, to straighten you out in connection with your labor problem?

A. I went to see my Congressman. It was somewhere between—after the time that I was dismissed from Government service.

Q. Well, that was around March or April of 1945, was it not?

A. My lawyer had some papers that I had sent to my union attorney, which would specify the time that I had gone to Washington.

By the Court:

Q. Well, I believe you testified Friday——

[fol. 1806] A. It was on a Saturday morning.

Q. It was April, I think you said?

A. Well, I have the records when I wrote my lawyer and recommended that about two weeks I ought to go down and see my Congressman.

By Mr. Saypol:

Q. In any event, that is what fixed the incident in your mind, as to time?

A. That is correct, sir.

Q. You took this night train down to Washington; you got there before 9 o'clock?

A. That's right, sir.

Q. You found out that Congressman Dickstein wasn't around and his office closed?

A. I called at 9.00 and he wasn't around.

Q. Then you started thumbing through the telephone book and that is when you made the visit to this man, Elitcher, whom you had seen casually in City College in 1939?

A. No, that is not so, Mr. Saypol.

Mr. E. H. Bloch: Wait a second before you answer.

The Court: Wait a minute. Let your lawyer say something.

Mr. E. H. Bloch: If the Court please, I object to the question because it is again premised under a state of facts not in the record. In fact, it is contrary to the testimony up to now.

[fol. 1807] The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: May I know in what respect it is contrary? I don't like to be inaccurate.

Mr. E. H. Bloch: Because I believe that the testimony is that the first time he came to see Elitcher was either in the latter part of '43 or '44—Elitcher places it in June '44. I believe you are now referring to the second trip, Mr. Saypol. Elitcher claims it was in September '45, and I think this witness claims that it was sometime in April 1945. I don't know whether you mean the first or second trip, you see.

Mr. Saypol: Well, if you will allow me to continue with my question, you will see what I mean.

The Court: Go ahead.

Q. Here is this man Elitcher, that you hardly knew up in City College in 1939, whom you had seen in 1940 for a minute—you said for a few seconds—at a swimming pool?

A. Well, I can't specify the exact length of seconds.

The Court: We don't hear you.

The Witness: I said, I can't specify the exact length of seconds in the minute. It was very casual.

Q. All right, we will start again. We will give you the benefit of the doubt.

[fol. 1808] Here was a man whom you had known casually in City College in 1939 and whom you had seen for all of a full minute at a swimming pool in 1940, when you were with Sobell, and whom you suddenly decided to visit because you were lonesome, on an evening in 1944; and did you then decide in April or March of 1945, on a Saturday morning, to look this fellow up again because you were lonesome?

Mr. E. H. Bloch: If the Court please, I object to the question upon the ground it is argumentative.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

A. No, it had nothing to do with being lonesome. I knew he had lived in Washington, and I was in Washington, and I had some time before I went over to the union headquarters to try to find a Mr. Stein and another person I wanted to see there.

By the Court:

Q. Did you say it had nothing to do with being lonesome? I thought you told—

A. No, it happened that second time I was in Washington on a mission for myself.

Q. Didn't you tell us Friday here that you were lonesome and that you began to think of other friends of yours from City College?

A. That was the second time I am talking about, Mr.— [fol. 1809] your Honor. Mr. Saypol is talking about the time I went down to see my Congressman.

Q. I see. The second time when you did call Elitcher, you were lonesome at that time and you called him because you wanted somebody to talk to?

A. No, it was the first time.

Q. Oh, the first time you were lonesome?

A. That's right.

The Court: I see.

By Mr. Saypol:

Q. Well now, the first time that you went to see Elitcher, you told us that you thumbed through the telephone book and you looked for Sobell and you didn't find that, so then you looked for Elitcher; is that right?

A. That's right.

Q. And that was in the summer of 1944?

A. That is correct.

Q. Now, getting back to Elitcher for a minute, had you been in touch with Elitcher between the time you saw him in 1944 and this March or April of '45 when you visited him on Saturday morning?

A. No, I had not been in touch with him.

Q. Had you written to him?

A. No, I didn't.

Q. Had he written to you?

A. No, he didn't.

[fol. 1809a] Q. Between 1940 and this incident in 1945, when you looked for Sobell's name in the Washington telephone book, had you been in touch with him?

A. Between 1940 and '45?

Q. Yes.

A. I might have seen Sobell between that period, I don't know.

Q. How often?

A. Actually, I don't recall if I ever saw him at all, but I might have seen him.

[fol. 1810] Q. Did you write to him?

A. No, I didn't.

Q. Did he write to you?

A. No, he didn't.

Q. What was it that inspired you to look for Sobell when you were in Washington that Saturday morning at nine o'clock in 1945?

Mr. E. H. Bloch: Now, if the Court pleases, again I think this ought to be clarified. If Mr. Saypol is directing the witness's attention to the first meeting, it ought to be explained. If it is the second meeting, we are talking about something else. I think, Mr. Saypol, with all due respect——

The Court: Well, aren't the dates clear enough?

Mr. E. H. Bloch: No. You see, Mr. Saypol is talking about the second visit as though it was the first visit, and I say, Mr. Saypol, with all due respect, you are a little confused about these visits.

Mr. Saypol: I wasn't there, and I am trying to find out whether your client was there.

Mr. E. H. Bloch: Well, neither was I, but I have to go by the testimony.

The Court: Well, when counsel get all through with their little tete-a-tete, I will rule.

Mr. Saypol: I am sorry.

Mr. E. H. Bloch: I apologize.

[fol. 1811] The Court: Now, will you get the point cleared up, Mr. Saypol.

Q. You say you hadn't corresponded with Sobell, there had been no exchange of correspondence between you, between 1940, the swimming pool, and 1944, when you visited Elitcher at night?

A. That is correct.

Q. You are not certain whether you saw him or not in the intervening four years?

A. That is correct.

Q. At least you have no recollection of having just seen him?

A. That is right.

Q. But you have testified, have you not, preceding your visit to Elitcher in Washington in 1944, you looked in the telephone book for Sobell's name and for Elitcher's name, is that right?

A. That's correct.

Q. You testified that you did not find Sobell's name but you did find Elitcher's name?

A. That is correct.

Q. Didn't you know that Sobell was working for General Electric at that time in Ithaca, New York?

A. I didn't know.

Mr. E. H. Bloch: You mean Schenectady.

Mr. Saypol: I said Ithaca.

Mr. E. H. Bloch: Oh, I am sorry.

Q. Did you know that he was working in Schenectady? Your lawyer has corrected me.

A. No, I didn't know.

[fol. 1812] Q. You don't know either way?

A. You see, I don't recall whether I knew it or not. I knew subsequent—subsequently that he worked for General Electric.

Q. Now, Mr. Rosenberg, do you remember having testified about an incident with Ruth Greenglass in February, 1945, when she asked you to come to her apartment?

A. Yes.

Q. Will you tell me——

Mr. E. H. Bloch: Will you keep your voice up? We cannot hear it.

The Witness: I am sorry.

Mr. Phillips: Excuse me—how about the usual morning recess?

The Court: We started about eleven o'clock, we will have it at twelve o'clock, a few minutes before.

Is there something about this subject that suggest- a recess to you?

Mr. Phillips: The clock showed me a recess. I turned around and looked at it.

Q. Tell us just what happened and when? Describe it for us again, will you?

A. Well, I don't recall the exact date that I went to——

Q. Or the exact month?

A. No, sir. It was the time——

Q. Do you recall the exact year?

[fol. 1813] A. Yes, I will tell you when it was.

Q. All right, give us that; what year?

A. It was the time between——

Q. First give us the year, won't you?

A. 1945.

Q. 1945; go ahead.

A. After David Greenglass left for his camp.

Q. When did he leave?

A. I believe it was some time in January—although it may have been in January, it may have been the beginning of February, I don't recall exactly when.

The Court: About how long after?

The Witness: I cannot specify. It might have been a week, it might have been two weeks, sir.

Q. Didn't you tell us on your direct examination the reason you remember it is, it was about the time you were suspended from your Army job?

A. I did not say that, sir.

Q. What did you say?

A. I said I remembered it when I heard the witness, Dorothy Printz, on the stand. I recall the incident but I didn't recall the exact time of the incident.

Q. You mean you hadn't recalled that incident before?

A. No, I hadn't recalled that incident before.

Q. You only recalled it here in the courtroom?

A. That's right, sir.

[fol. 1814] Q. Go ahead. Now, tell us when it was and tell us what happened.

A. Well, at that time I entered the house and Ruth Greenglass called me aside to tell the kid to go into the bathroom—that was her sister Dottie—and I did that and she said something to the effect that she is worried about the fact that David, her husband, wants to make some money and take some things from the Army.

I told her to warn David not to do anything of the sort,

he might get himself into trouble, and I mentioned to her at that time something about the accounts I had read about G. I.'s taking things and getting themselves involved in a mess—and that was the substance of the conversation.

Q. Did you say that at that time Ruth had spoken to David at Albuquerque on the telephone?

A. No, I didn't say anything of the sort.

Q. Who did you tell that to at that time?

A. I mentioned to my wife when I came home that her brother has some crazy notions but I told Ruthie to knock it out of his head—something to that effect.

Q. What did your wife say?

A. She says it was a good thing that I told Ruthie to warn him.

Q. Did you tell it to anybody else in the famly?

A. No, sir.

[fol. 1815] Q. Did that leave a strong impression with you at the time?

A. No, it didn't.

Q. There came a time when—I will withdraw that.

Did you know at the time that was told to you that he was working on a secret project?

A. That's correct.

Q. In other words, in February, at least, the end of January, 1945, or the beginning of February, or some time in February, you knew that David Greenglass was working on a secret project?

A. That's correct.

Q. You knew something about secrecy in connection with Army projects, didn't you?

A. That's correct.

Q. You were working on similar things yourself?

A. Right.

Q. You knew what "classification" was and you knew what the penalties were for the violation of the secrecy precautions?

A. That's correct, sir.

Q. Now knowing that and knowing that there was involved your wife's brother in respect to making money by stealing things from the Army, you told nobody else but your wife?

A. That's correct.

Q. Did you make any effort aside from the advice that you gave to your sister-in-law to prevent any indiscretions of this kind on the part of David Greenglass?

A. No, I felt that she would carry the message to him, [fol. 1816] and by nodding her head when I made that statement she seemed to agree.

Q. You knew that he was working in a machine shop at this secret project? Is that right?

A. I knew he was working as a machinist.

Q. And did it occur to you that he would probably try to steal gasoline—is that what you said?

A. Parts, that's what occurred to me.

The Court: What did you say?

The Witness: Parts.

Q. What kind of parts?

A. Tools.

The Court: Wait a minute. You said—this is your testimony, page 1615 of the record: "I have read some accounts in the newspapers about some G. I.'s doing foolish things and taking parts and gasoline from the Army."

The Witness: That's right.

The Court: Was it gasoline that occurred to you also?

The Witness: That's right.

Q. Now there came a time when David Greenglass was discharged from the Army in 1946, wasn't there?

A. Yes.

The Court: Wait. I want to ask you something. You mean between that incident and the discharge of David Greenglass from the Army you never had occasion to discuss [fol. 1817] this desire on the part of David Greenglass to take things from the Army?

The Witness: No, because it didn't enter my mind: it was just like a passing incident.

The Court: The fact that a brother-in-law of yours was about to get himself into some kind of difficulty by taking things from the Army, that didn't belong to him did not enter your mind?

The Witness: No, sir, not at that time.

Q. A moment ago you said that you had no knowledge at

the time that Ruth Greenglass had spoken to her husband on the telephone in Albuquerque, is that right?

A. That's right.

Q. Do you remember when the agents talked with you on June 16th?

A. Yes.

Q. Did you tell them then—did you tell the agents that at that time you had spoken to David on the telephone in Albuquerque?

A. Did I tell them? I don't recall telling them anything of the sort.

[fol. 1818] Q. Now I asked you the direct question whether you told the agents in the course of the interview on June 16, 1950, that in February, 1945, Ruth Greenglass had telephoned, had spoken on the phone to David in Albuquerque and about a week or so after that she went out to New Mexico to visit David.

A. I never told them that. They may have told me that.

The Court: All right, we will at this point take our recess.

Q. One question: Who was doing the questioning? You or the agents? Were they asking you questions or were you asking them questions?

A. They were asking me questions, Mr. Saypol, but they were also trying to direct my attention to an answer they might want.

The Court: All right, we will take the recess.

(Short recess.)

Q. Mr. Rosenberg, did you know that Mrs. Greenglass perhaps had telephoned to her husband in Albuquerque in November of 1944?

A. I didn't know, sir.

Q. Did the agents tell you that, too?

A. No, sir, I don't recall.

Q. But you say that they told you——

A. I didn't say they told me; they may have told me, but I know I didn't tell them.

Q. Well now, you say on June 16, 1950, the agents [fol. 1819] may have told you that in February, 1945, that

Mrs. Greenglass had telephoned to her husband in Albuquerque?

A. I don't recall, sir.

Q. You say now here that you didn't know it and you never told it to them at any time?

A. Not that I can remember, sir.

Q. That interview took place about eight or nine months ago, didn't it?

A. It took place in June, 1950.

Q. That interview lasted from nine o'clock in the morning approximately until two or three in the afternoon?

A. That is correct, sir.

Q. And you cannot remember whether you told the agents or they told you about the fact of a telephone call between Mrs. Greenglass here in New York and her husband in Albuquerque in 1944 or 1945?

A. That is right, sir, I cannot remember.

Q. Did you tell the agents on June 16, 1950, in the course of the interview about this conversation with Mrs. Greenglass in 1945 in which she told you she was very much worried because David was going to start stealing gasoline from the Army?

A. Mr. Saypol, she told me——

Mr. Saypol: May this witness be directed to answer?

The Witness: Yes, I am answering. She told me in that [fol. 1820] conversation he had an idea and I didn't know if he did or he didn't do anything at that time. He only thought about the idea.

Q. In other words, you distinguish between the idea of stealing and the fact of stealing?

A. That is correct.

Q. Do you say the idea of stealing is right or wrong?

A. It is wrong.

Q. And was it because she told you that he had the idea as distinguished from doing it that you did nothing more than tell it to your wife, his sister?

A. That is right.

Q. At least you knew from that time that he had ideas of theft in his mind, did you not?

A. Correct.

Q. Then when he came out of the Army in 1946, did you go into business with him and stay in business with him for three years?

A. That is right.

Q. In other words, you, knowing that at one time you had been told this man had larcenous ideas, nevertheless you went into business with him?

A. Well, Mr. Saypol, David Greenglass talked about a lot of things. He used to boast about things. I don't know if he really did a thing like that, or just talked about it.

By the Court:

Q. Well, didn't you question him before you went into [fol. 1821] business with him a little more thoroughly and before you put your money into that business to find out whether or not he had more than ideas about these things?

A. It was only mentioned to me once by his wife. I had no proof that he did anything like that. I actually didn't know whether he would carry out his thought into action.

Q. Of course, you remember the incident here in 1951. This incident that occurred in January or February of 1945. So you must have thought of it.

A. Well, I just thought of it now, that is right. It flashed through my mind. Also the time he spoke to me in 1950 on two occasions when he was very disturbed.

Q. Well now, then, of course these incidents must have been implanted into your mind to such an extent that you remember them?

A. Yes.

Q. Several years after?

A. Correct.

Q. And the question I put to you is whether or not before you invested your money in a business with this man you did anything by way of questioning him more thoroughly concerning his ideas of stealing things from the Army?

A. No, I didn't question him at that time because I didn't know if he actually did them.

Q. I am talking about his ideas of stealing, not whether [fol. 1822] he actually had stolen anything, but merely thinking about stealing.

A. No, I didn't question him at that time.

By Mr. Saypol:

Q. Did you tell the agents about that when they interviewed you on June 16th?

A. They didn't ask me about that.

Q. Did you think you should have volunteered it to them?

A. Well, when a member of the family is in trouble, Mr. Saypol, you are not interested in sinking him.

Q. You knew at that time when you had the interview on June 16th that he had been arrested, didn't you?

A. No, I didn't know that. I knew he had been picked up. I asked the agents what had happened to him; they wouldn't tell me.

Q. Did you have any idea what he had been picked up for?

A. No, not until after I read the newspapers.

By the Court:

Q. Were you trying to protect him at that time?

A. Well, I didn't know what he was accused of, your Honor. I had a suspicion he was accused of stealing some uranium at that time.

Q. Well, in connection with that, were you interested in protecting him?

A. I wasn't interested in doing him any harm at that particular point.

[fol. 1823] Q. Were you interested in protecting him, I asked you.

A. Well, I felt that when a man is in trouble, the one thing his family should do is stick by the man, regardless of the trouble he is in.

Q. You are answering the question. You were interested in protecting him?

A. Not in protecting that act itself, but protecting the individual.

Q. To the point where you would not reveal something which you felt——

A. Well, I wasn't asked a particular thing like that and there was nothing for me to reveal. I wasn't aware of the trouble he was in.

Q. You said you believed it had something to do with stealing uranium.

A. I had an idea.

Q. Very well. Now, this incident that occurred in January or February, 1945, that is, taking things from the Army, would be related to such an incident, wouldn't it?

A. That is correct.

Q. The question, I believe, asked by Mr. Saypol was whether or not you revealed that to them when you were questioned?

A. They didn't ask me that, your Honor.

By Mr. Saypol:

Q. Had you told the agents when they called upon you that morning that you wanted to cooperate with them?

A. They told me they wanted to ask me some questions, [fol. 1824] and I said I would answer the questions.

Q. Did you tell the agents, did you tell them that you wanted to cooperate with them?

A. At that particular time, yes, sir.

Q. Did you tell them that more than once in the course of the interview?

A. A couple of times before they tried to involve me.

Q. You testified on direct examination, did you not, that when the agents called at your home that morning, you hadn't had your breakfast and you were not fully dressed, is that so?

A. Correct.

Q. Is it a fact that you testified that when the agents suggested that you come to their office and confer with them, that you first talked to your wife? Is that right?

A. When they came into the house, I went into the—a little while after they were there, a few moments after they entered the apartment, I went into the bathroom and finished my shaving and I talked to my wife there and she told me, "If you can help Davey, if he is in some serious trouble that he is in, you ought to do it. You ought to go down and see if you can help him."

Q. You knew at that time of the disclosure concerning the theft of atomic bomb secrets from Los Alamos, didn't you?

A. Well, I read about the Harry Gold case.

[fol. 1825] Q. You read about the Klaus Fuchs case, too?

A. That is correct.

Q. Didn't you?

A. That is correct.

Q. You know concerning the fact that David Greenglass had been questioned in February by an agent of the FBI regarding the theft of uranium, didn't you?

A. That is correct.

Q. Where did you find that out?

A. David told me.

Q. When?

A. Told me at the shop.

Q. When?

A. I don't exactly remember the date, but I know he told me.

Q. You mean sometime subsequent, February?

A. That is right.

Q. So that at least after that you knew first that your sister-in-law had told you of David's expressed inclination to steal something from the Army in February, 1944, and you knew of the fact that inquiry by the FBI of David Greenglass regarding the theft of uranium?

A. That is correct.

Mr. E. H. Bloch: I think Mr. Saypol meant February, 1945.

Q. February, 1945. And you knew of the Klaus Fuchs and Harry Gold incidents?

A. But I didn't link the two up.

[fol. 1825a] Q. I say you knew of them?

A. That is right.

Q. Those four things, correct?

A. Correct.

Q. Greenglass wants to steal in February, 1944; the FBI asks Greenglass in February, 1945; the FBI questions Greenglass in February, 1950, about the theft of uranium; June 16, 1950, you are questioned; Greenglass was in custody; Klaus Fuchs has been apprehended and Harry Gold you knew about in relation to the atomic bomb? Is that correct?

A. That is correct.

[fol. 1826] Q. You knew then, too, didn't you, of the relation of uranium to the atomic bomb on June 16, 1950?

A. That is right.

Q. And you still say that you had no suspicion, you had no idea when the agents questioned you, regarding the nature of the arrest of David Greenglass?

A. That's right, because David Greenglass himself told me that he didn't steal the uranium after that interview, for I believed him.

Q. You were very much his adherent; you wanted to protect him?

A. No, I was not very much his adherent.

Q. Well, let us look at these watches for a moment, Mr. Rosenberg. We will come back. You said before you did not know how many watches they took. Are these all your watches, that is, yours or your wife's (handing)?

A. That's right.

Q. Are these the watches that were taken from you or from your home on June 16th—rather July 17th, 1950?

A. That is right.

Q. Now let me see; there is one that is a yellow metal men's watch, Clebar 17-jewel——

Mr. Saypol: May that be marked for identification, or perhaps in evidence? Counsel will not object, I take it.

The Court: Why mark it in evidence?

[fol. 1827] Mr. Saypol: All right.

The Court: You can mark it for identification.

Mr. Saypol: All right, mark it for identification.

The Clerk: Government's Exhibit 30 for identification.

The Court: I think if you are going to mark anything, mark it A, B and C for identification.

(Marked Government's Exhibit 30-A for identification.)

Q. Now there is another one marked Croton Automatic. Is that right, a white metal case?

A. No, Aquamatic.

Mr. Saypol: Yes, the defendant is right, it is Aquamatic, rather than Automatic.

May this be marked for identification, too.

(Marked Government's Exhibit 30-B for identification.)

Q. Then there is apparently an ancient watch that apparently you must have gotten from a relative, Mr. Rosenberg?

A. I got two from a relative, my father's watch——

Mr. E. H. Bloch: Will you speak up, please.

Q. A Waltham watch that you got from your father, in a hunting case, a black case with a yellow chain.

Mr. Saypol: May that be marked for identification.

(Marked Government's Exhibit 30-C for identification.)

Q. Did you have any other men's watches?

[fol. 1828] A. At the house?

Q. Any place.

A. Yes, sir, I did.

Q. What other watches—I withdraw that. Did you have any other watches at the house?

A. Yes, there were other watches at the house.

Q. Any others taken by the FBI?

A. I don't know whether they took them or left them. There were a couple of cheap pocket watches that were broken. There was another wrist watch that was broken.

Q. Did you show those watches to the agents or did they show them to you?

A. I believe they did.

Q. Did you talk to them or did they talk to you about any other watches at any other time?

A. No, they did not talk about any other watches.

Q. Then there was no discussion between them and there was nothing shown to you, and there was nothing taken, isn't that the fact?

A. They looked through the drawers of the bureau——

Q. Anything like the——

Mr. E. H. Bloch: I submit that the witness be permitted to answer.

The Court: Wait, one at a time. Finish your answer.

A. (Continuing) I said they looked through the bureau drawers where I kept the old watches that did not work, [fol. 1829] and they looked through all those drawers, and that is where I kept the watches, and that is where they found these watches except for the watch that I wore on my hand.

Q. Do you suggest that perhaps they took watches that haven't been produced here?

A. No, I do not suggest that, sir.

Q. Now you say you had another watch at some other time?

A. That is right, sir.

Q. What kind of watch was that?

A. I remember the name——

Q. Wasn't that name Omega, in a white metal case?

A. I believe that is the watch.

Q. Is that the one you got from some Russian representative?

A. That is the one I got from my father.

Q. An Omega?

A. That is right.

Q. How long ago?

A. How long ago? It was before my father died.

Q. When did he die?

A. In 1946.

Q. What kind of a watch was it?

A. It was a wrist watch.

Q. Describe it.

A. It looked something like that Croton one.

Q. Describe the circumstances under which he gave it to you?

A. He gave it to me as a present.

[fol. 1830] Q. What was the occasion?

A. What was the occasion? It may have been my birthday in May of—in May of 1945 or 1946. I don't remember exactly which year.

Q. Don't you remember whether it was a birthday present or not?

A. I believe it was a birthday present.

Q. Aren't you sure whether it was a birthday present?

A. Yes, it was.

Q. Now are you sure?

A. Now I am positive it was.

By the Court:

Q. How old were you at the time?

A. Well, it would be when I was probably 28—28 or 27, one of the two years.

Q. What did your father give you the year before for your birthday?

A. He used to give me shirts, ties.

Q. What did he give you the year before that?

A. Clothing—clothing articles usually.

Q. This year he gave you watch?

A. That's correct, sir. He was doing a little better in—in his working, at his trade.

Q. What was his trade?

A. He was a clothing operator and that year he was doing pretty well, I remember. He also gave me - bond one time.

By Mr. Saypol:

Q. What kind of a bond?

A. War Savings Bond.

Q. How much.

A. I don't remember because my mother had those [fol. 1831] bonds.

Q. Was it a thousand-dollar bond?

A. No.

Q. Was it a $25. bond?

A. It was either a $25. or $50. bond. My mother has those bonds.

The Court: What was the value of this Omega watch.

The Witness: I have no idea, sir.

Q. Where did he buy it, sir?

A. I would say he either bought it in 1945 or 1946.

Q. Where did he buy it?

A. Where? I don't know, sir.

Q. Possibly he bought it from your brother-in-law, Sam?

A. No, he did not.

The Court: Was it registered in your name?

The Witness: I wouldn't know if it was registered in my name.

The Court: Well, didn't he give you the bond?

The Witness: He is talking about the watch, sir, and you are talking about a bond.

The Court: How about the bond? Was that registered in your name?

The Witness: That was registered in my name.

Q. Where is it today?

A. I believe I turned it over to my mother, that war savings bond.

Q. Let us come back to this Omega watch. You say [fol. 1832] your father used to give you clothing?

A. That is right.

Q. Did he ever buy you a suit?

A. He bought me suits.

Q. How recently?

A. Well, when my father died, I got all his suits and all his wardrobe.

Q. He couldn't obviously buy those for you?

A. No.

Q. Did he ever buy a suit for you as a birthday present?

A. Not for a birthday present; on an occasion.

Q. You mean for your bar mitzvah, perhaps?

A. No, when I needed a suit.

Q. How much did he pay for the watch, do you know?

A. I have no idea.

Q. Don't you know that an Omega watch costs more than $100.

A. I have no idea, sir.

Q. Did he ever buy you presents for $100. on your birthday?

A. No, sir.

The Court: Where is that watch today?

The Witness: Well, on a vacation trip that I was taking with my wife and child, the band broke and I put it in my vest pocket, and the baby, who was sitting on my lap, picked it up and dropped it out the train. When I got off the train I remember I reported to the New York Central Lost and Found Division, the loss of this watch. It was after my father's death. I told them it was very important to me because it was something that my father had given to me. [fol. 1833] I wrote out a slip telling them what the watch

was like and what it meant to me, and I never heard from them again on it.

Q. What kind of a trip? Where were you coming from?

A. I was coming from the country.

Q. Where is the country, in what State, City or County?

A. Well, my wife would recall the——

Q. It was in the United States?

A. It was in the United States.

Q. Was it in New York State?

A. It was across the Hudson on the other side; I believe Plat—something to do with "Plat."

Q. You mean Plattsburgh, New York?

A. No, Platkill, I think it was.

Q. Platkill. You mean around the West Shore Division of the New York Central Line?

A. That is correct. I know we took a ferry across.

Q. In what year did this occur?

A. I cannot remember the exact year. My wife would be able to remember that.

Q. Well, it must have been after 1945?

A. Oh, sure, it was after my father's death in 1946.

Q. Now then, was it 1947, 1948, 1949 or 1950?

A. It was either 1947 or 1948, I would say.

Q. So that the summer of 1947 or 1948, you reported [fol. 1834] to the New York Central Railroad?

A. The loss of the——

Q. The loss of a watch on the West Shore train, and you said in your report that that was a watch which had a great deal of sentimental value because it had been given to you by your father for a birthday present?

A. That is correct.

Q. And as long as you described the watch——

A. That is right.

Q. How did you describe it? I put the name of the watch down and told them the name of it.

Q. What was the name of it?

A. Omega.

Q. What else did you say about the watch so that they would know it was yours? Did you tell them how many jewels there was on the watch?

A. That I don't know because I don't remember.

Q. Do you know how many jewels it had?

A. No.

Q. Did you tell them whether it had a sweep hand or a second hand?

A. I don't recall

Q. Did it have a sweep second hand?

A. It might have or it might not have; I don't recall, sir.

Q. Do any of these watches have sweep second hands?

A. I didn't notice if any of them have it.

Q. Here is Government's Exhibit 30-A for identification —that is the Clebar watch. Hasn't that got a sweep second hand (handing)?

[fol. 1835] A. That is right, it does.

Q. Did you ever notice that before in that watch?

A. I didn't notice it.

Q. How long have you had that watch?

A. I believe this is the watch that I bought from my father on Father's Day, before he died.

Q. You mean first your father gave you a present for your birthday and then you bought another watch from him?

A. No, I bought this watch for him.

Q. I beg your pardon.

A. As a Father's day gift.

Q. I see.

A. And this watch, if I am not mistaken, was a watch I bought from Ethel's brother.

Q. You mean from Sam?

A. That is right.

Q. Do you know whether your father bought the Omega watch that he gave you from Sam?

A. I have no idea, sir, where he bought it.

By the Court:

Q. At the time you got that Omega watch you had several watches, didn't you?

A. No, sir. At that time I only had—I had lost my watch. I had had a wrist watch, a Waltham watch which I got for my bar mitzvah, and that year I remember I lost it, and that

was the occasion why on my birthday my father gave me that watch.

Q. Where did you lose that one?

A. I don't remember where I lost it. It just was lost. [fol. 1836] Either the hand broke and I lost it in using it.

Q. Then this Omega watch would be the second wrist watch that you lost?

A. That is right, sir.

By Mr. Saypol:

Q. Now look at Government's Exhibit 30-B for identification; that is the Croton. How long have you had that (handing)?

A. I bought this watch in 1950.

Q. You know where you bought that watch, don't you, 30-B for identification?

A. That is right.

Q. Where?

A. I bought it on Delancey Street near Clinton Street, a jewelry store.

Q. Now this watch of your wife's——

Mr. Saypol: May this be marked, please.

(Marked Government's Exhibit 30-D for identification.)

Q. You have seen that watch before, 30-D?

A. Yes, sir.

Q. That is the one you bought from a peddler at Emerson's, is that right?

A. Yes, that is right.

Q. Now do we have it then that sometime in the summer of 1947 or 1948, one of those two years, and no others——

A. That is right.

Q. ——you were riding on a train of the West Shore, New York Central Division, and you lost an Omega watch and reported it?

A. That is right. My wife can testify the time we were on vacation. She remembers those things better than [fol. 1837] I do.

Q. In the course of your direct testimony, in response to questions the Judge asked you, you said that you are

not an expert on those things, and you were referring to politics, Russian politics, is that right?

A. That is correct.

Mr. E. H. Bloch: If the Court pleases, I object to the form of the question "Russian politics."

The Court: He says "Yes, sir," he was referring to it.

Mr. E. H. Bloch: Well, I mean the witness can very easily be confused. I submit that we were talking about American politics, too—politics.

The Court: Mr. Saypol was directing his attention to Russian politics.

Mr. E. H. Bloch: All right.

Q. Now let us read right from the record so we won't have any more dispute. Mr. Bloch questioned you——

Mr. Saypol: At page 1600, Mr. Bloch.

Mr. E. H. Bloch: Thank you.

Q. ——and you answered as follows, after saying that you would fight for this country if it was engaged in a war with any other country—by the way, did you ever fight for this country? Were you ever in the Army?

A. No, sir.

[fol. 1837a] Q. What was your activity during the war?

A. The Signal Corps of the United States Army deferred me.

[fol. 1838] Q. Engaged in——

A. Engineering work.

Q. ——engineering signal work, highly important secret projects; is that right?

A. That is correct.

Q. On the basis of your work, you secured deferments throughout the war?

A. The Government asked for deferments for me.

Q. You asked, too, did you not?

A. No, sir; the Government asked for my deferment.

Q. Didn't you join in any applications, 42-A, for deferment?

A. Well, I was told to fill the application out

Q. So you did join in them?

A. Naturally.

Q. Now, Mr. Bloch asked you the question and this was your answer:

"Yes, I will, and in discussing the merits of other forms of Governments"—now this is you talking—"I discussed that with my friends on the basis of the performance of what they accomplished, and I felt that the Soviet Government has improved a lot of the underdog there, has made a lot of progress in eliminating illiteracy, has done a lot of reconstruction work and built up a lot of resources, and at the same time I felt that they contributed a major share in destroying the Hitler beast."

Then the Court asked this question——

[fol. 1839] Mr. E. H. Bloch: Would you finish, please?

Q. (Continuing) "The Hitler beast who killed six million of my co-religionists, and I feel emotional about that thing."

Then later on the Court asked you this question:

"Did you approve communistic system of Russia over the capitalistic system in this country"?

And you answered:

"I am not an expert on those things, your Honor, and I did not make any such direct statement."

Do you remember having testified that way?

A. That's right.

Q. Well now, you had said a little while before that you felt that "the Soviet government has improved a lot of the underdog there"; what did you mean by that?

A. What I read in newspapers.

Q. And what did you read about the improvement of the lot of the underdog in Soviet Russia, as you read it in the newspapers?

A. Well, that the worker there, as living standards were increased, his housing conditions were better than at times he lived under the Czar. That is what I meant by increasing the lot of the "underdog."

Q. What newspapers did you read that in?

A. Various newspapers.

Q. You mean, the Daily Worker?

[fol. 1840] A. On occasion; the New York Times.

Q. Any others?
A. Yes.
Q. What others?
A. The Herald Tribune, The World Telegram.
Q. The Wall Street Journal, perhaps?
A. No, I don't read the Wall Street Journal.
Q. "Has made a lot of progress in eliminating illiteracy"; what did you know about that?
A. They built schools.
Q. Where?
A. From what I read.
Q. Where were the schools built?
A. In the Russian cities.
Q. What cities?
A. I don't know, sir.
Q. Where did you read that, same newspapers?
A. Newspapers.
Q. "Has done a lot of reconstruction work"; what did you know about that?
A. Well, there are a lot of reporters that go to Russia and report how the cities have been rebuilt, that were destroyed by the Nazis.
Q. What cities, for instance?
A. Stalingrad, Moscow.
Q. What type of reconstruction had been done?
A. I wouldn't know the details, sir. That is what I read the newspaper reports on.
Q. "Had built up a lot of resources"; tell me about the [fol. 1841] resources, won't you, please? What kind were they? Where were they? What they are? What were they intended for?
A. I wouldn't know everything about it, but I knew they built some large dams. That is what I consider "resources."
Q. Dams you consider resources?
A. That's right; hydroelectric stations. That is a dam.
Q. Did you read anything about the request of Russia for the atomic bomb? Would that be perhaps a resource that you had in mind?
A. No, I was talking about a previous period.
Q. What other resources?
A. That is about all I referred to.

Q. Aside from the dam?
A. That is what I referred to as the resources.
Q. No wheat?
A. What is that?
Q. Wheat, grains?
A. I know Russia is a wheat producer. I read it in the newspapers.
Q. The only resources you can think are dams?
A. No, factories.
Q. Where would the dams be stored?
A. I don't understand your question, Mr. Saypol.
Q. Well, I don't understand you, frankly.

Mr. E. H. Bloch: If the Court please, I object to this colloquy between counsel and witness.
[fol. 1842] The Court: Now, I am going to say I don't understand you. You just be quiet. Let's have none of this colloquy now.

Q. Isn't it a fact that you read the Daily Worker regularly?
A. No, sir; I didn't read it regularly.
Q. Where did you buy it?
A. Newsstands.
Q. Where?
A. Various newsstands.
Q. Didn't you get it regularly at a newsstand at Madison and Rutgers Street?
A. No, sir; I didn't get it regularly there. I bought it at lots of newsstands.
Q. Do you know where the newsstand is that I am referring to?
A. You said at Madison and Rutgers Street.
Q. Isn't that where you used to get the Daily Worker every day?
A. No, sir; I never got the Daily Worker every day.
Q. Were there some occasions that your wife got it, when you didn't get it?
A. There are occasions when my wife got the Daily Worker.
Q. Is it fair to say that you or your wife got it every day?
A. No, sir; that is not fair to say that.

Q. What is the fact?
A. On occasions we would read the Daily Worker.

[fol. 1843] By the Court:

Q. Would you say your only source of information for the statements which Mr. Saypol read to you was from newspapers?
A. That's right, sir.
Q. Now from any direct contact with anybody or what anybody ever said to you?
A. Only from newspapers, sir; and the newspapers I am referring to are reports from the New York Times and Herald-Tribune.
Q. You mentioned the papers; you mentioned them all?
A. That's right.

Mr. Saypol: Is your Honor finished?
The Court: Yes.

By Mr. Saypol:

Q. Do you remember the occasion in 1950 when Dave Greenglass saw you and said he wanted $2000. or a medical certificate?
A. He didn't say $2000. or a medical certificate. He asked for——
Q. What did he say?
A. Well, the occasion you are referring to, Mr. Saypol, happened sometime in the middle of May, I believe, in 1950. He asked me to give him a couple of thousand dollars, and when I told him I couldn't get the money for him, he asked me if I could possibly get my doctor to give him a vaccination certificate.

Q. You mean he was willing to settle for a medical [fol. 1844] certificate if you wouldn't give him the $2000.?
A. No, sir; he wouldn't settle for anything. He wanted the money and that.

Q. Well, I thought you said a moment ago, and I think your direct testimony was, that at first he wanted $2000., and when you told him you couldn't get that, he then said he wanted to get a medical certificate?

A. No, he said, "At least if you couldn't do the other thing for me, if at that time, at the moment, you couldn't raise the money for me."

Q. Then you reported that back to your wife?

A. That's right.

Q. What did she say?

A. She was terribly disturbed over it.

Q. How did she show her terrible disturbance? What did she do or say?

A. She said something to the effect, "Was Ruthie nagging Davey for money again"? And I told her, "No, it doesn't look like that is the thing," but then she asked me, she prevailed upon me to see if I would ask my doctor for that certificate, and I said, "The next time I visit my doctor on my regular hay fever injection, I will ask him."

Q. Let me read you your testimony on direct in that regard, and see if we can refresh your recollection.

Mr. E. H. Bloch: What page, Mr. Saypol?

[fol. 1845] Mr. Saypol: I will come back to that. Never mind.

Q. You say that she showed her terrible agitation by saying, "Was Ruthie nagging him for money again"?

A. Nagging him for money; that's right.

Q. Now, do you remember the incident in 1945, in February, when Ruth Greenglass called you aside and sent Dorothy into the bathroom and she was terribly disturbed because David said he wanted to steal some things from the Army to make some money; do you remember that?

A. That's right.

Q. And you told that to your wife?

A. I told her the substance of what happened.

Q. Did your wife say at that time, "Was Ruthie nagging David for money again"?

A. No, she didn't.

Q. That time she didn't say it?

A. No.

Q. Do you remember having testified regarding the typewriter at your house?

A. Yes.

Q. Is that so?

A. I remember, sir.

Q. Do you remember having testified:

"I don't recall her doing the typing at the house at all," "doing any typing at the house"?

Mr. E. H. Bloch: Excuse me, Mr. Saypol. Would you refer to the page or are you now talking about substance, generally?

[fol. 1846] Mr. Saypol: I am referring to substance. I want to see what the witness' recollection is.

A. I would like to specify the times concerning the typing, if it is all right with you, Mr. Saypol.

The Court: Well, I believe you testified to that. He is asking you a question. Can't you answer that?

The Witness: Well, would you repeat the question then, Mr. Saypol?

Mr. Saypol: Will the reporter be good enough to repeat my question to the witness.

(Question read.)

A. When I say "no typing at the house at all," I am referring to specifically the charges that were leveled against us.

Q. You mean, she didn't type any spy or espionage material at the house?

A. That's right.

Q. That she never typed, or she typed other kind of material?

A. That's right.

Q. You mean, somebody else typed that?

A. No, sir; nobody else typed that at my house. What I mean, sir, from the time of the birth of our first child until the present, there were only very, very few occasions that my wife sent any letters out, and they were letters [fol. 1847] either for jobs of mine or a business letter that I didn't write in longhand, or a letter like an appeal to the Government to be reinstated, but prior to the birth of our child, my wife did a lot of typing away from the home.

Q. Well, let's see what your testimony was at 1628:

"Q. Prior to the time of your marriage do you know whether or not your wife made a living as a typist?

"A. She did.

"By the Court:

"Q. When did you say you were married, Mr. Rosenberg?

"A. We were married on June 18, 1939.

"Q. What sort of typing did your wife do at the house in 1944, if any?

"A. I don't recall her doing the typing at the house at all.

"Q. How about 1945?

"A. 1945, too.

"Q. You mean, no typing?

"A. No, we didn't do any typing. If I wanted to write a letter for business or for a job or something like that that needed to be typed, I would have her do it for me."

Now, you say that she did do typing, but it was for the union or for Civil Defense; is that it?

A. Before the birth of our child, before 1943, that is when she did the typing.

Q. As a matter of fact, she did a lot of typing [fol. 1848] there, did she not?

A. At home?

Q. Yes.

A. No, sir; she did not.

Q. None at all?

A. I don't say "none at all." I say, on rare occasions she typed letters for me.

Q. Now, coming along in the years, do you remember the time when you were in business with David and his brother; do you remember one time you had an argument with him about shirking the job?

A. Many times.

Q. Well, do you remember after he started going to night school, you got mad at him because he was staying away or he wasn't turning out any work?

A. Yes, I do remember.

Q. What happened?

A. After certain length of period of time our fights culminated in the fact that he didn't continue going to school. He might have attended one session, that is, one six months' period, but after that he didn't attend any more; he had to drop his courses.

Q. Do you remember having any argument with him about the failure to turn out work; there was no production?

A. Oh, sure, many arguments.

Q. Do you remember any specific one?

A. Sure, many occasions.

Q. And is it fair to say that you objected to it?

A. I certainly did.

[fol. 1849] Q. Was Mrs. Greenglass present at any time when you objected?

A. Yes.

Q. When would you say that first started?

A. The arguments with Dave Greenglass?

Q. Yes.

A. Over the schooling?

Q. Yes.

A. I can't specify the years, but it was during the Pitt Machine Products' existence.

Q. What was the first year?

A. I would say it was in 1948 and '49 that we had arguments continuously on the business; a couple of arguments were on the school; and other arguments were on the way he handled the men in the shop and the kind of work he did.

Q. So that starting at least in 1948 you were at odd ends about the way he was contributing to the business?

A. That's right, sir.

Q. Now, when you told Ruthie about it, what did she say?

A. She said I was taking advantage of him; I was trying to make him a menial; I was trying to treat him like a worker and not a partner. As a matter of fact, we had so many arguments concerning his technical ability that at one point in the business I had to hire a foreman over him, and he told me in many words after that. "How do you think I felt, Julie, when I had to work for my own worker?" I told him, "Well, if you keep on producing

rejects and losing money in the business and you [fol. 1850] don't know how to handle the men, we will never make a living."

Q. And so from that point on, both you and Dave, that is, you and David Greenglass and Ruth Greenglass, were at swords' ends, were you not, about the way——

A. We had many arguments.

Q. —about the way he was conducting himself? Besides that, the business was bad, wasn't it?

A. That's right.

Q. Nobody was drawing any money?

A. During 1949.

Q. There came a time when David Greenglass wanted to take a punch at you, didn't there?

A. That's right.

Q. And finally, you bought David Greenglass out, but you didn't pay him; is that right?

A. That is correct.

[fol. 1851] Q. And you owed him $1000.?

A. No, that is not exactly the way it was.

Q. Well, how much did you wind up owing him?

A. Well, the agreement was that I would pay him $1000.

Q. Was any other sum involved? Was it larger or smaller?

A. No. He felt it should have been larger all through the negotiations.

Q. But in any event you came to an agreement that you owed him $1000.

A. That is right.

Q. Just because you wanted to have money available to pay Schein and told him he would have to wait for his money?

A. Exactly.

Q. So on the one hand we have you pitted against Greenglass for different reasons and you owing Greenglass $1000.?

A. That is right.

Q. And that is the situation as we have it when we get into May, 1950?

A. Right.

Q. Is that right?

A. Yes.

Q. Except that in February, 1950, or some time shortly thereafter in spite of the fact that you were opposed to each other, David was no longer at the shop?

A. No longer working there.

Q. Was he at the shop?

A. He came around on occasions.

[fol. 1852] Q. Well, on one such occasion David told you that an FBI agent had questioned him about the theft of uranium at Los Alamos?

A. That is right.

Q. We get now to a discussion in May about the liquidation or the dissolution of the business, and was it about that time that you had a heated discussion with David?

A. That is right.

Q. Is that the occasion when you almost came to blows or at least when he looked as though he was going to assault you?

A. No. That occasion was working in the business.

Q. So in addition to that heated discussion there was another heated discussion in May, 1950?

A. But we didn't come to blows at that time.

Q. But it was a heated discussion?

A. That is right.

Q. About the stock, is that right?

A. That is correct. By the way, Mr. Saypol, all these heated discussions about the stock and the resignation were mainly prompted by his wife. She was the one who kept agitating for these discussions.

Q. According to your wife, she was the one who was nagging Davey for money?

A. Correct.

Q. Of course, that had nothing to do with the inquiry at all on the possible theft of uranium?

[fol. 1853] A. Oh, no, sir.

Q. Now we come to the middle of May one morning when he came to your shop and you were sitting in your office, and he said, "Come on outside, I want to talk with you." Do you remember that?

A. Yes.

Q. When was that? Fix it a little better than the middle of May.

A. I can't fix it any better. I don't remember the exact day or week.

Mr. Saypol: Do we have a 1950 calendar here, Mr. Kilsheimer?

Q. Do you remember what day of the week it was?

A. No, sir, I do not.

Q. After he said, "Come on outside, I want to talk with you," what did you do?

A. First I told him I had to attend to my business, the shop. "Let us talk in here," something to that effect.

Q. Yes?

A. But he said, "It is important. I would like to see you outside."

Q. Well, now here we are with a calendar for 1950. Where shall we start in the middle of May? Would you like to start on the 17th or the 15th? You use that in front of you and tell me when.

A. I am sorry, Mr. Saypol, I can't pinpoint the exact date or exact week in May.

Q. Well, you pick it out as well as you remember [fol. 1854] it?

A. I can't. It can be anywhere from May 16th to May 31st.

Q. Let us start with May 16th, then: here was this fellow, your brother-in-law; you were not friendly with him and you were not friendly with his wife, and he came to you on this May 16 morn, and he said, "Come on outside, I want to talk to you, it is important," and you first said you had business to take care of, but finally you went with him; is that right?

A. That is correct.

Q. And what happened when you went with him? Where did you go and what did he say and what did you say?

A. Well, on that occasion we went into the Hamilton Fish Park which is opposite my shop, and he said to me he has got to have a couple of thousand dollars at once.

Q. A couple of thousand dollars?

A. Yes, $2,000.

Q. Well, did he say $2,000. or did he say a couple of thousand?

A. $2,000.

Q. You remember a little while ago I asked you whether he said $2,000. and you said no, he said a couple of thousand.

Mr. E. H. Bloch: If the Court please, I object to that. A couple of thousand is two thousand.

[fol. 1855] The Court: All right, let us not quibble about it. Go ahead.

The Witness: And I told him, "Dave, you know the arrangement I made with you, that only after I had finished my obligation to David Schein would I be able to get you any money to pay you." I said to him, "After all, I made an arrangement only to pay you $1,000. I thought that was agreed."

He said, "I need $2000." Now that is why I said it was two. And I told him I couldn't get the money for him. He said, "At least you can do me another favor."

I said, "What is it? Maybe I can help you."

He said, "Will you ask your doctor if he will make up a vaccination certificate for another person whom he didn't vaccinate"?

Q. What did you think, he had smallpox?

A. No, I didn't think so.

Q. What could he do with $2000. assuming he had smallpox? Did he tell you?

A. No, he didn't tell me. I asked him what it was for. He wouldn't tell me.

Q. Did you think it a little fantastic for your brother-in-law to come to you and say, "I want $2000. for a smallpox certificate"?

Mr. E. H. Bloch: Wait a second. I object to [fol. 1855-A] that.

The Court: I sustain the objection.

Mr. Saypol, is this a convenient place to suspend?

Mr. Saypol: I didn't realize it was so late. Yes.

The Court: All right. We will suspend until 2:15.

(Recess to 2:15 p.m.)

[fol. 1856] Afternoon Session

JULIUS ROSENBERG, resumed:

The Court: May I see counsel for a minute, please?

(Discussion at the bench off the record.)

Cross examination continued by Mr. Saypol:

Q. We were talking at the recess, Mr. Rosenberg, about this session with David Greenglass on May 16th.

Mr. E. H. Bloch: Now, if the Court pleases, I did not think that that was the testimony. I believe that the witness testified it may have been any time from May 16th to May 30th.

The Court: All right.

Mr. Saypol: Well, I am willig to fix it May 16th.

Incidentally, do we have a large calendar here?

Mr. Harrington: Yes.

Mr. Saypol: I have a large calendar, and if the Court will allow me, I can mount it on an easel and the jury can follow it as they did with the other calendar here.

(Mr. Saypol hands calendar to the witness.)

Q. Do you recall having been asked these questions and giving these anwers——

Mr. Saypol: At page 1660, Mr. Bloch.

[fol. 1857] Q. "Q Was this in May, 1950?

"A. I believe that is when it was.

"Q. Now, did you see Dave later that month?

"A. Yes, I did.

"Q. Tell us the circumstances.

"A. Well, about the middle of May, I can't tell the exact date, David came to my shop one morning. He came into my office. I was sitting in my office, and he said, 'Come on outside, I want to talk to you.'

"I said, 'Look, Dave, I got to conduct my business. Let us talk here.'

"He said, 'No, it is important. Let us go outside.'

"Well, I walked outside of the shop with him.

"He said, 'Let us walk into the park.'

"Q. Now, when you say park, to what park are you referring?" And then you described the park.

"Q. Tell us about the conversation you had.

"A. Dave said to me as follows: 'Julie, you got to get me $2,000. I need it at once.'

"I said, 'Look, Dave, you know the arrangements I made with you. I obligated myself to Dave Schein. I gave him a down payment of $1000. I have no cash left. You can't get blood out of a stone. I just don't have the money. What do you want it for?'

[fol. 1858] "He said, 'I need the money. Don't ask me questions.'

"I said, 'Dave, you are getting very excited. What is the matter with you?'

"Q. Was he excited?

"A. He was very excited. So he said, 'Well, if you can't help me like that maybe you can do something else for me.'

"I said, 'What is it? If I can help you I will.'

"He said, 'Will you go to your doctor and ask him if he would make out a certificate for a smallpox vaccination?'

"I said, 'Why don't you go to your doctor?'

"He said, 'Don't ask me that. I can't do it.'

"Q. Was Ruthie present at this time?

"A. No, she was not."

Q. How do you know she was not?

A. Well, I was with him alone in the park.

[fol. 1859] Q. Any other reason that fixes it in your mind that that was the date or about the time the conversation took place?

A. No.

Q. Wasn't May 16th the day when she gave birth?

A. I don't know.

Q. Was that about the time she gave birth?

A. It may have been a little after the birth.

Q. "A. No, she was not. And I said, 'It is highly irregular, but I will ask my doctor if he will do that.'

"and he said, 'Don't tell him who it is for, and also, incidentally, while you are talking to him, ask him if he knows what kind of injections are required to go into Mexico.'

"I said, 'Dave, are you in trouble or something?'

"He said, 'Don't ask me anything about it. You got to do this for me. If you can't give me the money I need, at least do this for me.' "

And the Court asked you at the time some questions about the fact that you were unfriendly or you were hostile to each other, and in the face of that you said he came to you and he put this twofold request to you, the $2000., and if you can't do that for him, the certificate showing that he had been vaccinated for smallpox, and also the addi-
[fol. 1860] tional matter of asking the doctor while you were at it what was required to go into Mexico.

Mr. E. H. Bloch: Well, if the Court please, is there a question?

The Court: There must be a question.

Mr. E. H. Bloch: Yes, I am waiting for it.

The Court: I am waiting, too.

Q. Did anybody ever ask you for $2000. for a smallpox certificate or what kind of injections were required to get into Mexico?

A. Yes, David Greenglass.

Q. I say, did anybody else ever ask you for anything like that?

A. No, sir.

Q. Did you proceed to find out why?

A. He was very agitated, and I asked him in the best way I knew how to ask him.

Q. Did you suspect why he wanted it?

A. I suspected he was in some trouble.

Q. Did you suspect perhaps that it had to do with the theft of gasoline from the Army?

A. Possibly, part.

Q. Did you suspect perhaps that it had something to do with the theft of uranium from Los Alamos?

A. Possibly.

Q. Did you suspect that it had something to do with the type of information relating to the atomic bomb?

[fol. 1861] A. No, I didn't suspect that.

Q. Did you suspect that he wanted to flee the country?

A. I didn't know exactly what he wanted to do but I suspected it.

Q. And all you did was to tell your wife after that?

A. That is correct.

By the Court:

Q. When did you find out for the first time that David Greenglass had been working on the atomic bomb project?

A. When did I find out? Well, when we were working in the shop together, he mentioned to all the people that he worked on the atomic bomb.

Q. When was that?

A. In 1946.

By Mr. Saypol:

Q. As a matter of fact, didn't you tell the agents of the FBI when they talked to you on June 16th that you knew he had been working on the atomic bomb in the fall of 1945 after the explosion at Hiroshima?

A. I don't know if I said that.

Q. Is it possible that you did?

A. I don't know.

Q. Did you know in the fall of 1945 that he had been working on the atomic bomb?

A. All I recall, sir, is after he got out of the Army he told me about working on the atomic bomb.

[fol. 1861a] Q. As far as your wife goes, when did you tell her about this incident? Incidentally, did you tell her all the details that you have told us here in court?

A. Well, I told her about the gist of the incident.

Q. Well, you must have told her about the money?

A. I told her about the money, and I told her about the vaccination certificate.

Q. Of course, that is when she said Ruthie must be nagging Davey for money again, is that right?

A. That is right.

[fol. 1862] Q. And did you tell her about Mexico?

A. I don't believe I told her about that.

Q. Did you talk to her about the uranium incident at that time?

A. Well, that incident happened before that, when David told me about the FBI coming to him about the uranium, and since he told me he had nothing to do with it, well, the incident didn't enter my mind anymore.

Q. Well, you are not answering my question. I am asking you when you told your wife, his sister, about this demand or these demands that he had made on you; in discussing it with her, did you remind her perhaps of the conversation with Ruth Greenglass in 1945, when she told you she was worried because he wanted to steal something from the Army?

A. Well, I don't remmeber if I reminded her at this occasion, but it was either this occasion or the second time I spoke to David Greenglass that I remarked about that incident.

Q. Well now, coming again to this $2000.-smallpox-Mexico incident, you told her, your wife, and she said, "Maybe Ruthie is nagging him for money again?" Have you told her about the 1950 incident, involving the questioning about the uranium?

A. I don't recall whether I told her at that time or at a subsequent conversation I had with her.

[fol. 1863] Q. Let's see what your testimony is, at page 1663:

"Q. You didn't attempt to ascertain from any other source or have anybody"—there is an error in the record—"or have anybody else like your wife talk to her brother to find out what was wrong?

A. Well, that night when I came home I told my wife about the incident and my wife told me, 'What is the matter? Is Ruthie nagging Dave again for money?'

"I said, 'No, it doesn't seem to be that. He must be in some trouble. I don't know what it is.'

"And I recall at that time in my mind the incident—the instant he told me what happened to him in February when the FBI had come around to visit him and question him about some uranium. I thought maybe it had something to do with that or had something to do with a conversation Ruthie had with me many years back."

So it did occur to you at that time, when you told your

wife about this demand, that there had been this disclosure in connection with uranium?

A. That is correct.

Q. What did you say about it?

A. That is exactly, just exactly what I said.

Q. What did she say?

A. Well, she was disturbed about it.

[fol. 1864] Q. What did she say to indicate her disturbance?

A. She said, "I hope he really isn't in any serious trouble, but if you can help him to get that certificate from the doctor, you ought to try to." I told her, "Well, you know, he has had it in for me and Ruthie has had it in for me, and I don't like to bother much with him." But she said, "He is still my brother and if you can help him in any way I think you ought to."

Q. That was on the occasion when you told her about this $2,000., this May 16th incident; is that right?

A. I wouldn't specify the date, sir. It was some time in the end of May.

Q. As a matter of fact——

By the Court:

Q. Did you know at that time that he probably wanted the certificate to flee from the United States?

A. Sir, I didn't know what he wanted to do. He wouldn't tell me what he wanted to do.

Q. What did you think?

A. I didn't know why he wanted the certificate.

Q. I mean, did the thought occur to you?

A. I didn't know what his purpose was. I tried to arrive at his purpose by questioning him.

Q. I know you say you don't know, but I am asking you, did the thought occur to you that he wanted it to [fol. 1865] flee the United States?

A. I didn't know; I didn't know what he wanted it for.

By Mr. Saypol:

Q. Did you tell us that you had told your wife that when you testified to that on direct?

A. I don't get the question there, Mr. Saypol.

Q. When, Mr. Bloch, your lawyer, questioned you and you told about the incidents on May 16th, first about the meeting with David Greenglass, when he made these demands, and then when you told your wife about the incident that night, did you tell us here that you had told your wife about the theft of uranium in February, or about smallpox certificates, or about Mexico?

Mr. E. H. Bloch: If the Court please, I object to it on two grounds. In the first place, Mr. Saypol insists upon fixing the conversation as of May 16th.

The Court: All right.

Mr. E. H. Bloch: This witness states that it may have been anywhere from May 16th and May 30th.

The Court: Very well. That is true. The witness has said sometime in that period of time.

Mr. Saypol: But I have given him the benefit of every doubt and fixed it as May 16th.

The Court: He apparently doesn't want that benefit.

[fol. 1866] Mr. Saypol: He looked at the calendar as I handed it to him, looked at the calendar and said, "It must have been May 16th or after that," and I am taking May 16th.

Mr. E. H. Bloch: I object to Mr. Saypol taking May 16th. It is not what Mr. Saypol has in mind; it is what comes out of that witness stand. This witness has insisted time and time again that it could have been any time——

The Court: I don't need any further argument on the subject matter. I have ruled. It is sometime between May 16th and the end of the month, the witness says.

Mr. Saypol: If Mr. Bloch has a preference, I will take any date he suggests.

The Court: He doesn't want any particular date. He wants two weeks.

Mr. Saypol: Well, with that expression of his position, I will take any date between those two weeks.

The Court: All right.

Mr. Saypol: Sometime between May 16th and May 23rd —or May 30th.

Mr. E. H. Bloch: That is correct.

Mr. Saypol: Between May 16th and Decoration Day; will you take it that way?

[fol. 1867] Mr. E. H. Bloch: I am not taking it any way. I will take it how the witness takes it, Mr. Saypol.

Q. Between May 16th and May 30th, you told your wife about Davey's excited demand for $2000. or the certificate; now did you testify on direct about telling your wife about the uranium incident or about the trip to Mexico or about the certificate from Mexico?

Mr. E. H. Bloch: I object to the form of the question. Now, if Mr. Saypol wants to read this witness' direct testimony——

The Court: No, your objection is overruled.

Mr. E. H. Bloch: I respectfully except.

A. Mr. Saypol, I don't recall whether it was the first time I discussed with her the first incident that I met with David, when he was very agitated, or the second incident, which took place, I believe in June, whether I discussed with her and told her that I think it has something to do with the uranium, the uranium incident and the vaccination certificate in question.

Q. Did you think at the time that he was contemplating flight from the country?

A. I have already answered that, Mr. Saypol, a number of times.

Mr. Saypol: Will the Court direct an answer?

The Court: He answered. He said he had no thoughts on the subject.

[fol. 1868] Q. When did you go to see the doctor, or when did you telephone to the doctor?

A. Well, it was after David came to my shop. I had a usual appointment of Tuesday and Thursday nights during the week, and before I would go over to my doctor's house, I would call him to ascertain that he would be home, and I called him on that occasion.

Q. How long after that night was it——

Mr. Saypol: Excuse me. I withdraw that.

Q. How long after the excited conversation with David about the $2000. did you call or see the doctor?

A. It was in that week.

Q. You are sure of that?

A. Yes, sir.

Q. Do you remember having given this testimony, at page 1665:

"A. Well, we had regular appointments for Tuesday or Thursday of the week. In order to ascertain that the doctor would be home at night and not out on a call I would call him. So I called him that night and said, 'Can I come over, Dr. Bernhardt?' "

Now, is it the same night that you called him?

A. No, sir.

Q. Or some other night?

A. Some other night. When I meant "that night," I meant Tuesday or Thursday night, the appointed nights. [fol. 1869] Q. You notice that May 15th is on a Monday, do you not (showing calendar to witness)?

Mr. E. H. Bloch: Is that what the calendar shows, Mr. Saypol?

Mr. Saypol: Let him answer that, if he will, please.

A. Yes, May 15th was on a Monday.

Q. And your meeting was sometime between Tuesday the 16th and the 30th?

A. That's right.

Q. Tuesday and Thursday, you say, were your regular appointments with Dr. Bernhardt?

A. Correct.

Q. And you saw it was a few days after that you called him?

A. That's right; it may have been the next day, two days or three days. I don't recall exactly how many days after that I called him.

Q. Well, that would make it any time between the 19th and the first week in June, that is, the 19th of May or the first week in June, depending on the talk with David in the two weeks between May 16th and May 30th; is that right?

A. That is what I would say, sir.

Q. Didn't you think there was anything unusual in David asking you not to disclose for whom this information was sought when you talked with the doctor?

A. I tried to elicit that information from him. He wouldn't give me any information.

[fol. 1870] Q. Did you tell the agents on February 16th when they interviewed you—excuse me, on June 16th, when you were interviewed about these incidents with David, $2000., a certificate, Mexico, and your request of the physician?

A. I did not.

Q. Well, after you talked to the doctor, did you tell David what the doctor said?

A. That's right, I did.

Q. What did David say?

A. He said he would take care of it himself.

Q. How soon after you talked with the doctor did you tell him that?

A. I would put it a couple of days, two, three or four days after. One to three days after I talked to the doctor. It was on my way to work one day. I dropped into his house. He was still home and I spent a few minutes with him and I told him that and he said he would take care of that himself, and I left and went to the shop.

Q. So that now we are probably a week at least after the day when he made these demands on you, are we not?

A. That is what I would judge the time.

Q. In other words, we are now in May 23rd or 30th, or into the first week in June?

A. It was before the first week in June because some time in June is when I had the second conversation with him.

[fol. 1871] Q. And how soon after you reported to him concerning the doctor did you have the second conversation?

A. I don't recall exactly the amount of time but it was somewhere in the beginning of June.

Q. Well, was it a week or ten days or fifteen days after the conversation, after you reported to him concerning what the doctor said?

A. Well, before that—well, it must have been a week or ten days after, about that time.

Q. Now we are definitely into June, aren't we?

A. The last conversation I had with him, the incident when we took a walk, was in June.

Q. Did you tell him the doctor said he did not want to give him a phony certificate? Is that what you told him?

A. I said the doctor would not give him a certificate. That is all I told him.

Q. Do you remember having been asked this question and giving this answer,——

Mr. E. H. Bloch: What page?

Mr. Saypol: Page 1672.

Q. "Q. Did you have any further conversations with Dave Greenglass after you told him that the doctor, your doctor, would not give a phony certificate?

"A. Yes, I did."

A. Well, I didn't say "phony certificate." I be- [fol. 1872] lieve somebody questioned me about it being a phony certificate.

Q. Well, who said it, your lawyer?

A. No.

Q. Did he say it was a phony certificate?

A. Well, naturally it would be a phony certificate if he didn't take any vaccination.

Q. You say it would be a phony certificate.

A. That's right.

Q. And you knew that then when he asked you about it, didn't you?

A. That is correct.

Q. And you knew that when you talked to him about it?

A. I asked the doctor if he would give him a vaccination and he said no, unless he took a smallpox injection. That is all there was to the incident.

Q. Well, I say you knew it would be a phony certificate?

A. If he did not take a vaccination.

Q. And yet you asked the doctor for it?

A. I did not ask the doctor for a phony certificate. I asked the doctor if he would do such a thing.

Q. Well, what were you asking for the doctor?

A. I was just getting information for David.

Q. Would that change its character, of the phony certi-

ficate, just because you asked? Or is that like your distinction between thinking of stealing and stealing?

Mr. E. H. Bloch: I object to the form of the [fol. 1873] question.

The Court: I will sustain the objection.

Q. How about it? Did you think you were asking for a phony certificate?

A. I just asked the doctor if he would give him a vaccination certificate, and he said unless he——

Q. Without an examination or without an inoculation, is that right?

A. I didn't make any statement like that.

Q. Well, how did you make it?

The Court: Well, what did the doctor say?

The Witness: He said he would not, he would have to vaccinate him.

The Court: In other words, you concluded from that that he would not give anybody a certificate that he had been vaccinated whom he had not vaccinated?

The Witness: That is correct, sir.

Q. And this is the man——

The Court: And you were asking him for a certificate, for somebody who had not been vaccinated, is that right?

The Witness: Well, I don't know if the person had been vaccinated by him or anybody else.

The Court: You were asking him for a certificate for someone whom he had not vaccinated?

[fol. 1874] The Witness: That's correct. I asked him his opinion about it.

The Court: You asked him whether he would give such a certificate.

The Witness: That is correct.

Q. This was the man with whom you had had these many heated arguments and disagreements, whom you knew—suggested, at least, wanted to steal and who was questioned about the theft of uranium and who had made a demand of $2,000. on you, and still you asked the doctor about giving him—about issuing a certificate without a vaccination, is that right?

A. I have already answered that.

Q. Yes or no, please.

A. About the certificate for vaccination, yes.

Q. Did you tell that to the agents of the FBI when you were talking with them when you said you wanted to co-operate on June 16, 1950?

A. They didn't ask me that question.

Q. You felt you didn't have to tell them since they didn't ask you, is that right?

A. Yes.

Q. When was the next meeting? How long after the report to him which you say was early in June?

A. Mr. Saypol, you have that incorrect. I didn't say I reported to him early in June.

[fol. 1875] Q. Well, let me read you your testimony.

Mr. Saypol: Mr. Bloch, at page 1673.

Q. "Q. Can you fix the time with more precision than you have up to now? You said, I think, a couple of days, a week, or even fifteen days later.

"The Court: Later than what, later than the first conversation?

"The Witness: Yes.

"The Court: And they talked about——

"The Witness: The middle of May.

"Mr. E. H. Bloch: When he told him that the doctor would not give him a phony certificate.

"The Witness: I would say it was near the end of May then."

That is when you said he wouldn't give the phony certificate.

Mr. E. H. Bloch: I can't even hear the answer.

The Court: You can't hear him because he hasn't given any.

The Witness: I am listening to Mr. Saypol.

Mr. Saypol: He nodded his head.

Q. Will you answer audibly, please?

"Q. Well, now, during that period of about two weeks, what did you do to try to find out what trouble David Greenglass was in?

"A. I didn't do anything.

[fol. 1876] "Q. You didn't press him or didn't have anybody try to find out?

"A. No, I didn't press him."

Now then, between the time that you reported to him that he couldn't have the certificate and this second meeting that you referred to, wasn't there some other experience with him?

A. Yes, there was.

Q. When was that?

A. I would say a couple of days after I told him about the fact that the doctor didn't give the vaccination.

Q. Would that be in June now?

A. It might be the beginning of June or it might be the end of May.

Q. It might have been the 14th of May, too, isn't that right?

A. No, it might not have been.

Q. Sure of that?

A. No. I believe it was after that incident.

Q. After the doctor's incident also?

A. That is right.

Q. And that was a few days, a week or ten days or fifteen days after the first conversation?

A. That is right.

Q. Now, what was the experience that you had with him a few days after you reported back to him about the doctor?

A. Well, he called me and I went over to see him after supper one night.

Q. How long after he called you did you go over to [fol. 1877] see him after supper one night?

A. It was either the same day or the next night.

Q. Yes.

A. When I got to his house, he came out in the hall and he pushed me toward the banister, I believe it was, the stairway, and said, "I have got some company at home. I can't talk to you now. Either I will get in touch with you or you get in touch with me." I just went home.

Q. Before you went over, did you receive a telephone call from him?

A. Yes, I did.

Q. What did he say?

A. He would like to see me.

Q. Did he say it was urgent?

A. I don't recall his exact words. He told me he would like to see me.

The Court: Mr. Saypol, let us see if we can't expedite this.

Mr. Saypol: Pardon me?

The Court: Let us see if we can't push this along.

Mr. Saypol: Yes, I am trying to.

Q. You are referring the conversation and you are asked to fix the time.

"A. Well, I don't know exactly how many days after that first walk we had in the park it was, but it may have been a week or ten days or fifteen days, I don't recall exactly how many, when I received a call from David [fol. 1878] Greenglass and he said, 'It is important. I would like to see you. Come over.'

Do you remember having been asked that question and having given that answer?

A. That call wasn't at the time he called me to come to his house to see him in the morning that I referred to that incident.

Q. Referring now to the call you got from him after you told him about the doctor's refusal to issue the certificate.

A. He did say it was important; something to that effect.

Q. You say he did say?

A. Yes, that is right.

Q. You waited a day or two before you went over, is that right?

A. That is right.

Q. Did you think it was unusual for you to respond to go to see him about important things when you wanted to have nothing to do with him?

A. Well, if you are referring to the incident in June when I went over to see him in the morning, he was very agitated on the telephone; he was very disturbed.

Q. No, let us refer to the incident after you reported back to him about the doctor's refusal. You stay on that if you will. Isn't that when he said to you it was important and come to see him?

A. That is right.

Q. And I say did you think it was unusual for this man with whom you were at loggerheads and with whom [fol. 1879] you had these heated discussions, who had made these demands on you, to have you come to see him?

Mr. E. H. Bloch: Now, wait. I wouldn't object to the question if the phrase about loggerheads is deleted.

The Court: All right. With whom you were having the heated discussions.

A. I don't think so, your Honor, because in the first place his other brother was tied up with his wife dying in the hospital, who lived in the neighborhood, and a third brother lived away from home and he had very little to do with him, and the only close relative he had was my wife, who was his sister, and myself.

By the Court:

Q. He wasn't going to her; he was coming to you.
A. That is right. He came to the shop.
Q. He didn't on any other occasion go to her, did he?
A. No.

By Mr. Saypol:

Q. Did you tell us about that before?
A. About what?
Q. About this wife who was dying and this brother who was out of the country and that is why you thought you would go to him; that it was all right for him to call you to come to him.
A. I am only trying to understand why he came to me. [fol. 1880] Mr. E. H. Bloch: I object to the testimony. There is no testimony about a brother being out of the country.
Q. Who was dying?
A. Bernie's wife.
The Court: I think this subject matter, Mr. Saypol, is amply covered.

Mr. Saypol: I never heard about this dying, whoever it was.

The Witness: Well, Bernie's wife had Hodgkin's disease. She was in and out of the hospital.

Q. Don't give us the gory details.

A. All right, you are asking me, Mr. Saypol.

The Court: Let us not have any more. He said it was her brother's wife.

Q. In any event, you waited two or three days after he told you it was important. Then you went there and he had company and he couldn't talk to you, is that right?

A. That is correct.

Q. How long after that did you receive word from him that he wanted to see you again?

A. A couple of days after that.

Q. Then when would that be? What month?

A. I would say in June.

Q. And what happened then?

A. Well, it was either the next morning or two mornings [fol. 1881] after that I went to his house.

Q. And what happened?

A. We went downstairs in the street and we took a walk toward East River Drive.

Q. Yes.

A. And we had a conversation. David told me, "Julie, you have got to get me a couple of thousand dollars." He was very excited at this time. I told him, "Calm down, take it easy. I told you already the last time I can't give you any money."

Q. Let me interrupt you a minute. Let us go back to when you went to his house and he told you he couldn't talk to you because he had company. Did you tell that to anybody?

A. I told my wife.

Q. What did you tell her?

A. I told her about the fact that he called me over to see him and I didn't see him; I went for nothing.

Q. You couldn't figure out what it was?

A. No.

Q. Do you remember being asked these questions and giving these answers:

"Q. What did you tell her? What did she say?" meaning your wife.

"A. I told Ethel, that 'your brother is in some trouble; he is acting peculiar and strange and I don't know what to do about it; and you know that he has had it in for me and our relations haven't been the best'; and she prevailed upon me to see if we can do something to help him [fol. 1882] out, if he needs some help."

Now, which is the truthful version of what you told your wife? What you testified there or what you testified——

Mr. E. H. Bloch: I object to the form of the question on the ground that it is argumentative and it is a summation.

The Court: Oh, on that ground it is overruled. He is entitled to know which is the true version.

Mr. E. H. Bloch: It is also presupposing a state of facts——

The Court: Let us find out.

Mr. E. H. Bloch: I am perfectly willing that Mr. Saypol exhaust this line of questioning, but the phraseology he uses I object to.

The Court: Can you answer the question?

The Witness: I would say it was either on that occasion or the second occasion that I said that because it was only after I had all these facts of these incidents at my fingertips that I was able to make some kind of conclusion that he was in some serious trouble.

The Court: I think the subject matter has been very well exhausted and I would suggest, if you have just a few more questions on it, all right; otherwise, go on to something else.

[fol. 1883] Q. Didn't you tell us before in response to your lawyer's question that it was after you went to his home and he told you he was busy, he had company, to come back in a few days, that you then went and told your wife Davey is in some kind of trouble, he is acting peculiar?

A. I believe that is correct.

Q. I mean, you testified to that before?

A. That is correct.

Q. Is that actually what happened?

A. Yes, sir.

Q. And your answer a little while ago in response to a similar question was not accurate?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Overruled.

Mr. E. H. Bloch: It is a characterization. That is for the jury to decide.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

Q. Do you remember having told us a little while ago that you didn't say anything to your wife about it?

A. Well, I did say something to my wife about it.

Q. Do you remember having told us you didn't tell her anything about it?

A. At this moment, maybe I didn't recall whether I told her at that specific time or a week later, or a couple of [fol. 1884] days later, when the second incident occurred.

Q. All right, now. Tell us about the next incident. What was it preceded by? How was the meeting arranged?

A. David had called me and he told me it was urgent that he see me at once.

Q. Was that still in May or June? When was it that he called you?

A. It may have been the first or second day of June, or the last two days in May. I can't specifically tell you which day it was.

Q. Go ahead.

A. And I went over to see him.

Q. What did he say to you when he called you?

A. He told me it was very urgent, he had to see me at once.

Q. This is the second time he told you it was urgent or important?

A. Yes.

Q. Or was that the third time?

A. I don't know. I don't remember if it was the second or third time, but he told me at that time.

Q. Go ahead.

A. And I went over to see him in the morning before I went to work. I got up to his house. We went downstairs and headed towards East River Drive and that is the time

he asked me for $2,000. He said I have got to get it for him, and he asked me to get it from my relatives, from my family. I told him I couldn't do anything of the sort. [fol. 1885] Then he says, "Well, can you give it to me from the business?"

I said, "No, the business has all it can do to keep on its feet right now."

He said, "I have got to have the money, Julie, you must help me."

I said, "I realize you are in trouble. Take it easy. Don't get so agitated. But I can't give you any money right now."

And as the conversation went on, he got more and more excited, and at that point he said to me, "If you don't give me the money, you are going to be very sorry." And I saw that he was getting mad, and I was afraid that he might do me bodily harm, and I decided to cut the conversation at that point.

I said, "Look, Dave, it is warm. Go home and take a shower, and I am going to do some work. Goodbye." And I left him.

Q. Is that the morning when you went over to the house and you saw his wife there? Did you see his wife there at that time?

A. I believe I saw his wife at that time.

Q. Is that the time when she acted coolly toward you?

A. At that time, yes, and on another occasion after that. [fol. 1886] Q. I am talking now about this time. Was she cool to you that morning?

A. I don't believe I even talked to her much at that time. I just saw David.

Q. Do you remember having been asked this question and giving this answer:

"Q. Did you notice anything about Ruth's reception of you in terms of coolness or warmth?

"A. Well, she was cool."

Do you remember giving that answer?

A. That is correct.

Q. Is that why you told him to go home and take a shower? You wanted him to cool off, too?

The Court: Oh, let us not have that. Get along, Mr. Saypol.

Q. Well, by that time you knew that there was something about to happen to you; he was threatening you?

A. That is correct.

Q. Now, in June did you tell your wife about that?

A. I certainly did.

Q. What did she say?

A. I told her about that and she was very worried.

Q. What did she say?

A. She said, "This is bad. We ought to do something. We ought to see that he doesn't do anything foolish."

Q. Yes.

A. She wanted to call her brother.

[fol. 1887] Q. Yes.

A. I said, "I don't know if Ruthie knows about David's trouble, and you know that Ruthie just came from the hospital with a new baby; her burns are festering on her. I don't even know if Davey is home." It was in the evening. And I said, "Don't aggravate yourself about it. I don't think we should have anything to do with Davey after he tried to blackmail me like that."

And she said, "Yes, I realize that. You have had trouble with Davey, but he is still my brother, and when there are differences between people——"

By the Court:

Q. Blackmail you? Where did he try to blackmail you?

A. Well, he threatened me to get money. I considered it blackmailing me.

Q. What did he say he would do if you didn't give it to him? You said he said you would be sorry.

A. Yes. I consider it blackmail when someone says that.

Q. Did he say what he would do to you?

A. No, he didn't.

Q. Did he say he would go to the authorities and tell them you were in a conspiracy with him to steal the atomic bomb secret?

A. No.

Q. Do you think that was what he had in mind?

[fol. 1887a] A. How could I know what he had in mind?

Q. What do you mean by blackmail then?

A. Maybe he threatened to punch me in the nose or something like that.

[fol. 1888] By Mr. Saypol:

Q. So in any event you wanted to be through with him but your wife prevailed on you, that maybe you ought to do something for her brother?

A. That's it.

Q. And then what did you do?

A. Well, on my way to work one morning I dropped in to see him for a couple of minutes.

Q. How long after the conversation with your wife did you drop in?

A. A couple of days, I would say.

Q. You let a few days go by?

A. That is right because I was busy with my business.

Q. And what did you find?

A. I found Dave and Ruth there. I went into the house. I remember sitting at the table, and Ruth couldn't get around very well because her burns were bothering her, and everybody was sort of quiet, we didn't do much talking. I asked David how he was and he said "All right."

Q. Did you talk to him about what he needed money for?

A. No, because I did not know if Ruth knew about his troubles.

Q. Did you talk to him about why he wanted to go to Mexico?

A. No, I did not.

Q. Did you talk to him about why he wanted a vaccination certificate?

A. I did not.

Q. What was their attitude toward you?

[fol. 1889] A. Their attitude was like ice.

Q. You mean they had taken a shower?

Mr. E. H. Bloch: I object to the form of the question.

The Court: Don't answer it.

Mr. Saypol, do you suppose if I declare a recess you could shorten your cross-examination?

Mr. Saypol: Well, I will try, although I will be finished fairly soon.

The ordinary recess won't come for a half hour and I will be finished long before that.

The Court: Well, I thought perhaps if you could sit down at your table you would probably be able to cut some of your cross.

Mr. Saypol: No, I can move right along.

The Court: All right.

By Mr. Saypol:

Q. So we are now down to June 16th when the agents came to see you early in the morning, is that right?

A. That's correct.

Q. They weren't abusive and they weren't offensive, were they?

A. They were not.

Q. Do you remember having talked with your wife first before you went to talk with them about submitting to questioning?

A. That is correct.

[fol. 1890] Q. That is when she said to you "It probably is about Davey, we ought to try to help."

A. That is right.

Q. It was the day before Davey was taken into custody?

A. That is correct, sir.

Q. Now, in that setting, being questioned by the agents of the FBI, you were aware of all these preceding facts regarding Davey's suggested thefts, the questioning regarding the theft of uranium by him, you knew that he had been at Los Alamos, you knew that certain persons had been apprehended in respect—in regard to the theft of secrets relating to the atom bomb; you knew then that Davey had worked on the atom bomb; you knew of your own difficulties with him; you knew of the demands that he had made on two occasions of you for money; you knew of his requests of you regarding phony certificates; you knew of his suggestion or his statement about getting into Mexico, is that right?

Mr. E. H. Bloch: Wait a second. I object to the form of the question upon the ground that it is pure summation and upon the ground that this very question was asked and has already been answered.

The Court: Even if you did not raise your voice I would have sustained the objection.

[fol. 1891] Mr. E. H. Bloch: Well, I apologize, your Honor, but I am trying to restrain myself.

The Court: You know it is not unknown for cross-examiners to sum up in questioning.

Mr. E. H. Bloch: Yes, I know.

Mr. Saypol: I can do it that way—it will take me a little longer to do it the way Mr. Bloch wants it.

The Court: No, no, don't do it the way he wants it and don't let it take you any longer.

Q. You said to the agents that you would cooperate with them?

A. Correct.

Q. Did you tell them at that time, on June 16th, that at the end of July or August 1944 you knew that David was at Los Alamos, New Mexico?

A. I don't recall saying that to them.

Q. Do you recall having told the agents that in the fall of 1944 Ruth Greenglass had told you that David was at Los Alamos?

Mr. E. H. Bloch: Now if the Court pleases, I submit that this question has been asked and has been answered.

The Court: Well, let him ask it once more.

A. I don't recall stating that.

Q. Do you recall having told the agents that you [fol. 1892] did not know it was the atom bomb until after the first atom bomb was dropped at Hiroshima?

A. I don't recall that.

Q. Do you recall having told the agents that you assumed that since David was working on a secret Project in New Mexico, when you heard about the falling of the atom bomb on Hiroshima, you then surmised or you then assumed that it was the atomic bomb that he had been working on?

A. I don't recall that, Mr. Saypol.

Q. Do you recall on June 16th, 1950 having told the agents that in early November 1944 Ruth had spoken on the phone to David in Albuquerque and about a week or so thereafter she went out to New Mexico to visit David?

A. I don't recall that. I already answered that.

Q. Do you recall having told the agents that David obtained a furlough to see Ruth when she came to Albuquerque?

A. I don't recall that, sir.

Q. Do you recall any conversation about David in 1944 and 1945, between you and the agents?

A. As I stated on my direct examination, Mr. Saypol, that the agents kept on questioning me and directing my mind to a period where they wanted me to answer covering certain dates. I didn't recall at that time anything about the dates. I didn't recall even the seasons of [fol. 1893] the year he had his furlough. They kept on bringing my attention to them so that I could answer to cover a certain period.

Q. Did the conversation relate to David Greenglass?

A. Yes, it did.

Q. The questioning related to David Greenglass at Los Alamos, did it?

A. It started—that is correct.

Q. Do you recall Agent Harrington having asked you whether you had ever seen David alone at the time of his furlough?

A. I don't recall that, sir.

Q. Do you recall having told him that Davey liked to play pool so you went to play pool with him at Sammy's?

A. Possibly I might have said that; I don't recall.

Q. Well, is it a fact, did you play pool with him at Sammy's?

A. I don't know; I believe I played pool.

Q. You mean you can't remember whether you played pool with him at Sammy's and you can't recall whether you told it to the agents?

A. That is correct.

Q. Do you remember having been asked if you had contacted Ruth prior to her leaving for New Mexico and to

sound her husband out to see whether he would like to turn over confidential information to the Soviets concerning the secret Project that he was working on [fol. 1894] at Los Alamos?

A. I don't understand that question.

Q. Did the agents ask you on June 16, 1950 whether you had talked to Ruth before she went to New Mexico and whether you had suggested to her that she get information from David relating to the Project that was out there?

A. They asked me that question and I told them I did not say anything of the sort.

Q. You denied it absolutely?

A. That is correct.

Q. Do you remember the agents asking you whether you had got in touch with Ruth in New York City and made such a request of her?

A. I do not know whether they asked me that or they did not ask me that.

Q. Do you know that you denied it?

A. I know that I did not make such a request.

Q. Did the agents ask you as to whether arrangements had been made for her to be contacted in Albuquerque by the Soviet agents and what means was to be used?

A. They asked me that question.

Q. And what did you do?

A. I told them I did not do anything of the sort, I did not make any arrangements. I can't recall exactly all the questions and answers.

Q. Did you deny to them at that time that you had the technical knowledge sufficient to make such requests of anybody?

[fol. 1895] A. If they asked me that question I would deny that.

Q. Did they ask you concerning this meeting with a man in an automobile up around 42nd or 59th Street?

A. I believe they did ask me about it.

Q. And did you deny it?

A. I did deny it.

Q. And did you then ask the agents whether David had accused you of doing these things?

A. That's correct.

Q. And did you say to the agents that you wanted to be confronted with David?

A. That's right.

Q. And when they asked you what you would do if you were confronted, you said you would deny it, is that so?

A. I would call him a liar to his face.

[fol. 1896] By the Court:

Q. Did you on that occasion tell the agents this story about the demands that David had made?

A. I did not, sir.

Q. What was the reason for not telling them that?

A. Because I had no idea David was accusing me.

Q. Well now, the agents told you that he had accused you, didn't they?

A. Well, I don't know, sir. What they say and what is a fact sometimes isn't always——

Q. Well, they did tell you that, didn't they?

A. They told me near the end of the conversation that David was accusing me of asking him to get information.

Q. And you didn't say to them anything about David's request for money in May or June of 1950, nor did you tell them the story, as I understand it, of David's anticipated thefts from the Army, which were related to you by Ruth Greenglass in February 1945?

A. No, I didn't tell them, your Honor. The way I was brought up, I don't inform on my wife's brother, and whatever he did, I didn't know about and that is for him to decide, for him to answer.

Q. Then what you are saying is, even if there is something to inform about, you don't inform?

A. No, I didn't say that, sir, but since I was not aware of what troubles he was in, I would not aggravate his troubles [fol. 1897] by telling what my opinions of those troubles are.

By Mr. Saypol:

Q. Here was this man who had threatened to blackmail you, in your own words; here was this man who patently had charged you with the theft of atomic secrets in behalf of an espionage ring, and you say that you didn't feel called

upon at that time, when questioned by the agents, to make these disclosures that you knew about regarding David Greenglass?

A. I wouldn't answer it——

Mr. E. H. Bloch: Wait a second. I merely object to this first couple of words of the question. I don't object to the substance of the question itself.

The Court: All right, overruled.

Mr. E. H. Bloch: I respectfully except.

The Court: Have you heard the question?

The Witness: No, sir.

The Court: Will you re-read the question, please.

(Question read.)

A. In the first place, David Greenglass did not accuse me, according to what the agents said, of stealing secrets. They said he accused me of asking him to steal secrets. In the second place, I didn't know if David Greenglass said that, and I ask the agents to confront me with David Greenglass and I said, "He must be out of his mind," or some-
[fol. 1898] thing, "to say things like that."

Q. You testified that you owed your primary allegiance, you felt, to the United States of America?

A. That is correct.

Q. You found out about the theft of atomic secrets in the interests of Russia; do you think that was the proper thing to do?

A. It certainly is not a proper thing to do.

Mr. E. H. Bloch: Wait. Pardon me, Mr. Saypol. Do you mind, your Honor, if the question is read back and the answer is given?

The Court: All right, read it back.

Mr. E. H. Bloch: Because I am not quick enough.

(Question and answer read.)

Mr. E. H. Bloch: Now, if the Court please, I am assuming that this question was asked in a certain context, that is, June 16, 1950, and I now object to the question upon the ground that it is not borne out by the evidence, and it presupposes a state of facts not proven.

The Court: All right, overruled.

Mr. E. H. Bloch: I respectfully except.

In fact, your Honor, if I may say, this witness has testified that he did not know at that time——

The Court: We know very well what he has testified to [fol. 1899] and the jury's recollection will govern, not yours, not mine, not Mr. Saypol's.

Mr. E. H. Bloch: I am perfectly satisfied with that.

Mr. Saypol: Do we have the answer?

(Last question and answer read.)

The Witness: Your Honor, I didn't find out about these things. I heard it in court here. I heard in court Greenglass admits that he is a spy.

By Mr. Saypol.

Q. You mean, that when the agents told you that Greenglass had said these things, or when they said to you in their questioning that you had had these conversations with Ruth and done these things through Ruth and with David, that you didn't accept it, that you were being accused; is that it?

A. I said I was being falsely accused.

Q. Did you tell that to the agents?

A. I certainly did.

Q. Did you tell it to anybody else?

A. Yes, I did.

Q. Are you a member of the Communist Party today?

Mr. E. H. Bloch: I object to the question upon the ground it is incompetent, irrelevant and immaterial.

The Court: Well, let's see.

A. I refuse to answer that question.

[fol. 1900] Q. Were you a member of the party——

The Court: You mean, on the ground that to do so will tend to incriminate you?

The Witness: That's right; will tend to incriminate me.

Q. Were you a member of the party in 1944 and '45?

A. I still refuse to answer the question.

Mr. E. H. Bloch: Just a moment. I just want to get my objection for the record. Same objection, your Honor.

Q. Did you, in the month of June 1950, or in the month of

May 1950, have any passport photographs taken of yourself?

A. No, I did not.

Q. Did you go to a photographer's shop at 99 Park Row and have any photographs taken of yourself?

A. I have been in many photographers' shops and had photos taken.

Q. Did you have any taken in May or June of 1950?

A. I don't recall. I might have had some photos taken.

Q. For what purpose might you have had those photographs taken?

A. Well, when I walk with the children, many times with my wife, we would step in; we would have we would pass a man on the street with one of these box cameras and we would take some pictures. We would step into a place and [fol. 1901] take some pictures and the pictures we like, we keep.

The Court: He is not asking you that. He is asking you about these particular pictures in June 1950. What was the purpose of those pictures?

The Witness: Just—if you take pictures, you just go in, take some pictures, snapshots.

Q. What did you tell the man when you asked him to take those pictures in May or June 1950?

A. I didn't tell the man anything.

Q. Are you sure of that?

A. I don't recall telling the man anything.

Q. See if you can't recall. Try hard. May or June 1950, at 99 Park Row.

A. I don't recall telling the man anything.

Q. You mean, you might have told him something, but you don't recall it now?

A. I don't recall my saying anything at this time.

Q. What don't you recall? Tell us that.

A. I don't know, sir.

Q. Do you remember telling the man at 99 Park Row that you had to go to France to settle an estate?

A. I didn't tell him anything of the sort.

Q. What did you tell him——

A. I didn't tell him anything.

[fol. 1902] Q. ——at the time that you had the pictures taken?

A. What pictures are you talking about?
Q. In May.
The Court: The pictures at 99 Park Row.
The Witness: I don't know if it was 99 Park Row that I took the pictures.
Q. Where was it, if you don't know it was 99 Park Row?
A. I don't know. I have taken many snapshots.
Q. Passport pictures?
A. Not passport pictures.
Q. Did you ever tell anybody that you wanted pictures in order to go to France to settle an estate?
A. I didn't tell that to anybody.
Q. You don't recall it, or are you sure you never said that?
A. I am sure that I never said that.
Q. Now, do you recall, or are you sure now that you didn't have any passport pictures taken in 99 Park Row, in May or June, 1950?
A. I may have taken pictures, not—I didn't take any passport pictures.
Q. May or June 1950?
A. I might have taken pictures.
Q. For what purpose have you taken pictures in May or June 1950?
A. I have already answered that.
Q. May we have an answer?
A. Just taken pictures.
Q. Where are the pictures?
A. If the pictures were good pictures, I kept them at home.
[fol. 1903] Q. What kind of pictures were they? Describe them.
A. I don't recall.
Q. You were alone, you and your children, or you and your wife, or what?
A. There were many pictures I took with my family.
Q. In May or June 1950?
A. That's right.
Q. At the time David was talking about going to Mexico, what kind of pictures did you take and how many?
A. I don't recall.

Q. Do you know then that Sobell was around when you took those pictures?

A. I don't know whether he was around or wasn't around.

Q. When did you find out that Sobell was in Mexico?

A. When did I find out?

Q. You heard my question, didn't you?

A. Yes.

Q Was it a hard one?

A. Yes, I heard that Sobell was in Mexico through the newspapers.

Q. What did you have to do with sending Sobell away?

A. Nothing.

Mr. Kuntz: I object to that, if your Honor please. There is no testimony here that he had anything to do with sending Sobell or anybody else away.

The Court: You are excited, Mr. Kuntz.

Mr. Kuntz: I mean, to ask a question that way, I can convict anybody by that kind of question.

[fol. 1904] The Court: The jury will please disregard that statement by Mr. Kuntz, supposedly in behalf of his own client.

Mr. E. H. Bloch: If the Court please——

The Court: Your objection is overruled.

By the Court:

Q. Did you have anything to do with sending Sobell away to Mexico?

A. I certainly did not, sir.

Mr. Kuntz: That was not the question, Judge.

The Court: All right, I have asked the question, so the other question has gone by the board.

Mr. Kuntz: You notice I didn't object to your question, because it was a proper question.

The Court: Very well.

Mr. Phillips: But, your Honor made no ruling on the objection of Mr. Kuntz to Mr. Saypol's question.

Mr. Kuntz: I am satisfied with his answer.

Mr. Phillips: I would like to have a ruling that it was an improper question.

Mr. Kuntz: I am satisfied with it.

The Court: Are co-counsel fighting with each other there? I don't understand it.

Mr. Phillips: No, we are both on the same side, except that I am a little more emphatic on the first part.

The Court: Please be seated, Mr. Phillips. We have [fol. 1905] heard enough of that.

Mr. Saypol: I have had all I want.

The Court: Very well, we will take a recess.

Mr. Kuntz: May I ask a couple of questions on cross?

The Court: Just a moment. We are taking a recess.

(Short recess.)

The Court: Mr. Kuntz, do you want to cross-examine?

Mr. Kuntz: Just a couple of questions.

The Court: Go ahead.

Cross Examination

By Mr. Kuntz:

Q. Mr. Rosenberg, I don't know whether this has been covered yet, but I would like to cover it. There was some testimony by Elitcher, that sometime in July, 1948 he got into Sobell's car; that Sobell had a can, I think he described it, it looked as if it might have 35 millimeter film; that he went to Catherine Slip; that he left the car and that in the course of that trip he said he had to deliver that to you. Now, I want to know whether in July 1948 or any time from the beginning of the world to today did Sobell ever give you a can with any film in it?

A. No, he did not.

Mr. Saypol: You had better change that question. I don't [fol. 1906] think the witness is competent to answer. It goes back a little bit too far.

The Court: Yes, we won't cover it from the beginning of the world. We will cover it, say, from 1948.

Q. Did he ever give you any can with any film in it?

A. No, sir; he never did.

Q. Did he ever give you any kind of information belonging to the Government, whether it was secret or not?

A. No, sir; he didn't give me any information like that.

Q. Now, Mr. Rosenberg, I want to read, if I may, from Elitcher's testimony, and then question you on it.

Mr. Kuntz: Page 354, Mr. Saypol, beginning in the middle of a paragraph at the bottom.

Q. (Continuing) "He came back approximately a half hour later, or perhaps a little shorter, and as we drove off I turned to him and said, 'Well' " — now, this is Elitcher talking — " 'Well, what does Julie think about this, my being followed' " — this is still Elitcher talking — "He said, 'It is all right; don't be concerned about it; it is O.K.' He then said Rosenberg had told him that he once talked to Elizabeth Bentley on the phone but he was pretty sure that she didn't know who he was and therefore everything was all right. We proceeded back to the house."
[fol. 1907] Now, I want to question you: Did you ever have any conversation with Sobell, in July of 1948, or at any other time, when you used those words, that Elitcher testified to, about Bentley, or about his being O.K., about his being followed; did you have any such conversation with Sobell?

A. No, sir; I didn't have any such conversation with Sobell.

Q. Did you ever tell Sobell anything about Bentley or anybody else who is mentioned in this trial?

A. No, sir; I did not.

Mr. Kuntz: Thank you, that is all.

Direct Examination

By Mr. E. H. Bloch:

Q. Mr. Rosenberg, Mr. Saypol, on cross-examination went into some matters relating to your membership as a policyholder in the International Workers Order, commonly known as IWO——

The Court: Speak up; speak up. This is no secret.

Q. (Continuing) I now show you a letter (handing) and ask you whether that refreshes your recollection as to whether or not you were a policyholder in the International Workers Order?

A. Yes, it does.

[fol. 1908] Q. And after you had been taken into custody did you instruct anybody to continue to pay your premiums in that organization?

A. Yes, I instructed you to continue to pay my premiums.

Q. And can you tell us now how you paid—how you paid your premium (handing to witness)?

A. I made out a check to the International Workers Order and I sent the check to the secretary of the Lodge to which I belong.

Mr. E. H. Bloch: I am sorry, I am going to mark this paper that I previously alluded to, for identification.

The Court: Don't go too much into it.

Mr. E. H. Bloch: Just two more questions. I promised to be short and I will.

(Marked Defendants' Exhibit G for identification.)

Mr. E. H. Bloch: And will you also mark this for identification.

(Marked Defendants' Exhibit G-1 for identification.)

Q. I now show you Defendants' Exhibit G-1 for identification, and ask you whether that refreshes your recollection as to the name of the secretary of the Lodge of the IWO to which you belonged and to whom you made your payments.

Mr. Saypol: Just a moment, before he——

[fol. 1909] A. That's correct.

Mr. Saypol: Just a moment. Don't answer when I object, please.

It seems to me this witness should be questioned without refreshing, unless it is necessary.

The Court: Well, the topic isn't of great importance anyway. Go ahead, let us finish this up.

A. Yes, it does, Mr. Bloch.

Q. What was his name?

A. Albert Linnick.

Mr. E. H. Bloch: I now offer in evidence——

The Court: What is the relevancy of whether he paid a premium on the IWO policy?

Mr. E. H. Bloch: Mr. Saypol is the one who questioned his membership in the IWO.

The Court: Oh, wait a minute. He questioned him on a different basis entirely, and you know that. He isn't questioning whether he paid premiums or not. He wanted to know something about the organization itself.

Mr. E. H. Bloch: If that is the purpose, I am going to desist from further questioning.

The Court: All right.

Mr. E. H. Bloch: As long as it is conceded that this witness was a policy holder in the International Workers Order, I am not going to go on with the subject any further.

[fol. 1910] The Court: I think that is the very thing that he was trying to prove.

Isn't it, Mr. Saypol?

Mr. Saypol: Of course.

The Court: All right.

Mr. Saypol: As your Honor said, my approach was from an entirely different point.

Mr. E. H. Bloch: All right, there is no dispute about that.

The Court: Go ahead.

Mr. E. H. Bloch: I will not ask any further questions about that organization.

By Mr. E. H. Bloch:

Q. Now between the time that Mr. Saypol cross-examined you the other day and today, did you have an opportunity to think more closely about the number of classmates that you had at CCNY and whom you saw subsequent to your graduation from that institution?

A. I did, sir.

Q. And can you give us now the names of some other classmates of yours with whom you had either social or business relations after your graduation?

A. Well, there were people who were in my squads in the electrical engineering courses: Mr. Aaron Coleman who subsequent to graduation I met at Fort Monmouth when I [fol. 1911] was assigned there; Ingvar Jensen, another classmate of mine. Then there was Stanley Rosenberg, who was in some of my classes. I worked with him in the Signal Corps and I got business from him when he was connected with

Espe Radio and subsequently I got business from him when he went into his own business in Telmor in Long Island City. I used to have lunch with him at times. Then there was Jack Cantor who worked with me in the Signal Corps and subsequently worked for Radio Receptor Company. I went there to get business from him, and I met him at a number of contractors' plants in recent years, '49 and '50, and there were other people like Herbert Benowitz and Joseph Benjamin whom I went to school with, worked with and subsequently tried to solicit business when they were connected with other concerns.

The Court: Did you see any of these people socially?

The Witness: The only way I got to see them socially was by going out to lunch with them.

Q. In connection with——

The Court: In connection with your business?

The Witness: With my visiting them.

The Court: You did not meet them in any social or political groups of any kind?

The Witness: No, sir, I did not meet any of the people [fol. 1912] that I discussed here in a political group.

Mr. E. H. Bloch: Now I am going to ask a question now, your Honor—I do not know whether I covered it in my direct examination; it is just one question. I may have covered it.

Q. Did you ever tell Dave Greenglass that you stole a proximity fuse?

A. I never told him anything of the sort, Mr. Bloch.

Q. Did you ever steal a proximity fuse?

A. I did not, sir.

Mr. E. H. Bloch: May I call upon the Government to produce all the pictures that were taken by the Government agents from the home of the defendants Julius Rosenberg and Ethel Rosenberg at 10 Monroe Street, Manhattan, at the time of the arrest of this witness, or at any time subsequently——

The Court: Why didn't you ask Mr. Saypol that question—why didn't you, during the recess, tell him that you wanted that?

Mr. E. H. Bloch: I did. Mr. Saypol wasn't here. I asked one of the gentlemen of his staff.

Mr. Seypol: Do you mean passport pictures?

Mr. E. H. Bloch: No, I mean all the pictures, all the pictures.

Mr. Saypol: We will have them brought down right [fol. 1913] away.

The Court: All right.

Mr. Harrington: Well, they are on the way down now, Mr. Bloch.

Mr. E. H. Bloch: This is the last question.

The Court: I wish they would come down much sooner. We always seem to be waiting for something.

Mr. E. H. Bloch: May I make this suggestion, your Honor: This is the last point I am going to cover with this witness. I have two witnesses here who will be extremely short—probably three minutes apiece,—and while we are waiting——

The Court: All right.

Mr. E. H. Bloch: And for expedition——

The Court: Go ahead.

Mr. E. H. Bloch: —may I call them to the stand and ask that then this witness may be recalled.

The Court: All right.

(Witness temporarily excused.)

[fol. 1914] John Gibbons, called as a witness on behalf of defendants Rosenberg, being, being duly sworn, testified as follows:

The Court: Is this testimony that you have discussed with the Government?

All right, go ahead.

Direct Examination

By Mr. E. H. Bloch:

Q. Mr. Gibbons, are you an employee of the Herald-Tribune?

A. Yes, I am.

Q. And is that the organization that prints and publishes the New York Herald-Tribune?

A. Yes, sir.

Q. And have you appeared here in response to a subpoena duces tecum that has been served upon the Herald-Tribune, Inc.?

A. Yes, sir.

Q. I believe, which is the owner of the Herald-Tribune?

A. Yes.

Mr. Saypol: Does Mr. Bloch want to put a newspaper in?

The Court: Apparently.

Mr. Saypol: If you will show it to me I won't insist on a foundation.

The Court: Why don't you do that?

Mr. Saypol: What do you want?

Mr. E. H. Bloch: May 24, 1950, just the photograph (indicating).

[fol. 1915] Mr. Saypol: Do you want to put that in?

Mr. E. H. Bloch: Yes.

Mr. Saypol: Is that all?

The Court: All right, you may step down.

(Witness excused.)

Mr. E. H. Bloch: I now offer in evidence a photograph of Harry Gold appearing in the May 24, 1950, late city edition of the New York Herald-Tribune, and I ask, your Honor, that the jury be permitted to look at this photograph before I ask permission of the Court to introduce in evidence a photostat; and the reason I say that is because the photostat is a little more blurred and I would like them to look at it. Now I understand from the Herald-Tribune this is part of their file and it is about the only newspaper of this kind that they have.

The Court: You both agree to substituting a photostatic copy?

Mr. Saypol: Oh, sure.

Mr. E. H. Bloch: Yes.

Mr. Saypol: Let me ask, what is the object of it, if you will tell me that. What do you want to show, it is a differ-

ent Harry Gold than the one who had appeared on the witness stand?

Mr. E. H. Bloch: No. My object, Mr. Saypol, is to demonstrate, or at least to prove the improbability of the story [fol. 1916] of the Greenglasses when they testified——

The Court: Oh, now, look, gentlemen, I don't want any of this any more.

Mr. E. H. Bloch: Well, he asked me, your Honor, and I wasn't going to make a statement.

The Court: There is much too much of this going on.

Mr. E. H. Bloch: I offer it in evidence.

Mr. Saypol: I don't conceive that I have done anything improper, if the Court please.

The Court: Very well. I do not want any purposes or any reasons. We will cover that in due time in summation or in the charge. Let us have it—show it to the jury and then we will put a photostatic copy in.

Mr. E. H. Bloch: Is that all right?

Mr. Saypol: That is agreeable to me.

(Marked Defendants' Exhibit H in evidence.)

Mr. E. H. Bloch: I will give you a photostat in one moment.

Would your Honor mind if the jury looks at this photograph (indicating), and would your Honor mind further if they compare this photograph with the exhibit that has already been introduced by the Government in evidence?

[fol. 1917] The Court: Go ahead.

(Mr. E. H. Bloch hands exhibit to the Jury.)

The Court: Have you got your next witness.

Mr. E. H. Bloch: Yes.

Is Mr. Kelly of R. H. Macy & Company here?

Thomas V. Kelly, called as a witness on behalf of defendants Rosenberg, being first duly sworn, testified as follows:

The Court: What is the exhibit they are comparing it with?

Mr. E. H. Bloch: The exhibit which was introduced by the Government.

The Court: Is that the picture taken by the FBI?

Mr. E. H. Bloch: I don't know by whom it was taken.

Mr. Harrington: 5.

Mr. E. H. Bloch: Government's Exhibit 5, but I mean the Court wants to know by whom it was taken.

I believe so, your Honor.

The Court: Well, if all you are doing is to show that one is a better picture than the other—

Mr. E. H. Bloch: No, that is not the reason.

The Court: I don't know why you are making a comparison, frankly. I think the Herald-Tribune should be [fol. 1918] shown, and that is all.

Mr. E. H. Bloch: I am willing to take the other one out.

The Court: All right, it has all been done; let it go.

Direct Examination

By Mr. E. H. Bloch:

Q. Mr. Kelly, are you an employee of R. H. Macy & Company?

A. I am.

Q. Are you an attorney?

A. I am.

Q. And are you employed as part of the legal division of R. H. Macy & Company?

A. I am.

Q. And have you responded hereon behalf of R. H. Macy & Company pursuant to a subpoena duces tecum that has been served on R. H. Macy & Company to produce a certain record concerning a sale and delivery of a console table to Julius Rosenberg of 10 Monroe Street in the years 1944 and 1945?

A. That's correct.

Q. And have you brought with you any record of that transaction?

A. I have not.

Q. Have you made an attempt or has any employee of R. H. Macy & Company made an attempt to find that record?

A. I endeavored to find them, yes.

Q. And will you explain to the Court and jury why you haven't produced that record in court now?

A. Well, the subpoena calls for records during the years [fol. 1919] 1944 and 1945 and the records for 1944 and 1945 have been destroyed.

Q. Is there any way—is there any record of R. H. Macy Company now which could enable R. H. Macy to find out about this particular alleged transaction?

A. My information is that there are no such records.

Q. Would you have such a record if the purchaser had a D.A. account.

A. D.A. or a C.T. account, yes. C.T.—cash time.

Q. Assuming that the purchaser had retained the order slip with the number on it, would R. H. Macy at this time have been able to locate a record of this transaction?

A. No.

Q. You say these records have been destroyed?

A. Yes.

Q. For those years?

A. That is correct.

Mr. E. H. Bloch: That is all.

The Court: May I ask you something, Mr. Kelly? When a man makes a cash purchase at R. H. Macy, is he required to find the check which the sales girl makes out?

The Witness: No, your Honor.

The Court: He is not required to sign at all, is he?

[fol. 1920] The Witness: No.

By Mr. Bloch:

Q. How about when a delivery is made?

The Court: You mean after it is delivered to his home?

Mr. E. H. Bloch: No, no.

The Court: Or at the time of purchase?

Mr. E. H. Bloch: Yes, that is right.

The Court: At the time of the purchase, if it is paid for by cash.

The Witness: I don't think a signature is required. I am not connected with the sales force. I am in the legal office but my understanding is that it is not required.

Q. You don't know?

The Court: He says it is not required.

Q. Well, it is very important for us. If you do not know, say so, and if you do know, say so; otherwise we might get somebody else from your organization who has knowledge of these facts.

A. Well, I would prefer that.

Q. Is it your testimony now that you don't know of your own knowledge?

A. From my own recollection, no.

Mr. E. H. Bloch: All right, that is all.

[fol. 1921] Cross Examination

By Mr. Saypol:

Q. Mr. Kelly, when you say that records have been destroyed, are you referring to the sales records?

A. The sales slips; they keep them for four years.

Q. By whom were deliveries made for R. H. Macy in 1944 and 1945?

A. In 1945 it was named — it was United Parcel; in 1944, it was Macy's.

Q. Are the delivery records retained, or have they, too, been destroyed?

A. No, the delivery records might be available.

Q. Was R. H. Macy paying a sales tax on retail sales made in 1944 and 1945?

A. They were.

[fol. 1922] Q. R. H. Macy made quarterly returns to New York City in respect to those sales?

A. I presume they did.

Q. Are those records still retained?

A. Yes, sir.

Q. Do you know anything about this situation in the furniture department in 1944 and 1945 in respect to available stocks of furniture?

A. None whatsoever.

Mr. Saypol: That is all.

Redirect Examination

By Mr. E. H. Bloch:

Q. You say that delivery records are in existence concerning transactions in 1944?

A. Yes, United Parcel records.

Q. Well, let us see, didn't you say the United Parcel Service took care of Macy's delivery in 1945?

A. That is my recollection.

Q. How about 1944?

A. That was by Macy itself then.

Q. Let us take the two years separately: Are there any delivery records of R. H. Macy in existence concerning sales on a cash basis where they are followed by delivery here in Manhattan for the year 1944?

A. That would be Macy's? No.

Q. But you say that there are records available with respect to any cash sales made at Macy's in 1945 where de- [fol. 1923] livery was made by United Parcel?

A. They may well have those records. I believe they do.

Q. And are those records which record the delivery by United Parcel in the possession of R. H. Macy & Company?

A. No, they are not.

Q. Whose possession are they?

A. United Parcel.

Q. Where are they located, please?

A. I don't know.

Q. Are they in Manhattan, do you know?

A. Yes, they are.

Mr. E. H. Bloch: Thank you.

The Court: May I see that Herald Tribune.

Mr. E. H. Bloch: It is May 24th, your Honor. I think there is a piece of paper in there (handing book to Court).

The Court: Has those documents come down so that we can complete this examination?

Mr. Norton: No, they haven't.

The Court: Did I understand you to say that this didn't resemble Harry Gold (indicating book)?

Mr. E. H. Bloch: No, on the contrary, my contention is that it resembles him very well. It is a very good picture of Harry Gold.

If the Court please, in connection with this last item I understand that the pictures are not here yet.

[fol. 1924] The Court: No, they are not.

Mr. E. H. Bloch: May I make a suggestion, your Honor, in order to expedite the trial that the defendant Ethel Rosenberg go on.

The Court: All right.

Mr. E. H. Bloch: Then we can recall him.

The Court: Interrupt her as soon as the pictures arrive.

Mr. E. H. Bloch: Yes.

Ethel Rosenberg, one of the defendants, called as a witness in her own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. A. Bloch:

Q. Are you married?

A. Yes.

Q. To whom?

A. Julius Rosenberg.

Q. The other defendant in this case?

A. That is right.

Q. One of the other defendants in this case?

A. That is right.

Q. And you are a defendant in this case?

A. Yes, I am.

Q. What was your maiden name?

A. Ethel Greenglass.

Q. When were you married?

A. June 18, 1939.

Q. By whom?

A. I believe it was Rabbi Zin.

[fol. 1925] Q. When and where were you born?

A. September 28, 1915.

Q. Where?

A. 64 Sheriff Street, New York.

Q. Is that the same house in which your mother still lives?

A. That is right.
Q. How many brothers and sisters have you?
A. I have three brothers; no sisters.
Q. What are the names of the three brothers?
A. David, Bernard and Sam.
Q. Who is the oldest?
A. Sam.
Q. Is he a full brother of yours?
A. No. He is a half brother.
Q. How? In what way?
A. The same father but not the same mother.
Q. Who comes next in age?
A. I do.
Q. I mean of the brothers?
A. Oh. Bernard.
Q. How old is Bernard?
A. Well, Bernard is two years two months and two days younger than I am. That would make him about 33.
Q. And David is the youngest in the family?
A. That is right.
Q. And you are how much older than David? Should I say about six years?
A. Yes, six or seven; something like that.
Q. Now, were you brought up with David in the same [fol. 1926] house.
A. That is right.
Q. Until what time?
A. Until I was married.
Q. And at the time of your marriage in 1939 David was how old?
A. He must have been——
Q. About 17?
A. About 17, yes. I was going to say about 17.
Q. And you were about 22 or 23?
A. I think I was 24: 23 or 24.
Q. Now, did you have any schooling?
A. Yes, I did.
Q. Will you kindly give the jury a brief sketch of your schooling and education?
A. Well, I attended public school 22. And then I attended Public School 12. That was called junior high school. Then

I attended Seward Park High School from which I was graduated in June 1931.

Q. At the age of about 17?

A. No, I wasn't 16 yet.

Q. What if any other educational institutions did you attend?

A. Well, I then took a short secretarial course at another public school for about six months. I received a certificate. That was covering subjects like bookkeeping and stenography and typing. And I didn't go to any kind of institution but I had a private Hebrew tutor who came to the house. I also had a private piano teacher from whom I took lessons for about two years.

[fol. 1927] Q. Did you also study voice?

A. Yes, I did.

Q. With whom?

A. The Carnegie Hall Studios.

Q. In connection with your voice studies did you attend any group of singers?

A. Yes, I did. I became the youngest member of the Schola Cantorum under the directorship of Hugh Ross.

Q. How long were you connected with that organization?

A. For a year.

Q. Anything else you studied?

A. Yes. When my child was about two and a half I think, my older child, I took a course with the New School for Social Research in child psychology. I also took a course in music for children at the Bank Street school in Greenwich Village, and then sometime in the spring of 1950 I took a course in guitar.

Q. Were these two courses, the one in child psychology and the other in music for children taken in order to equip and condition you to raise your child?

A. Yes, that really was the reason.

Q. How many children have you?

A. I have two children.

Q. What are their ages?

A. Well, Michael was eight March 10th.

Q. He is the older of the two?

A. That is right. And Robert will be four May 14th.

[fol. 1928] Q. At the time of the arrest of your husband, where did you live?

A. 10 Monroe Street, Manhattan.

Q. You lived there at the time of your arrest?

A. That is right.

Q. And when were you arrested?

A. August 12th.

Q. Where are your children now?

A. They are at a temporary shelter in the Bronx.

Q. Have you seen them since you were arrested?

A. No, I have not.

Q. Now, throughout the period in which you lived at 10 Monroe Street who was keeping the house?

A. I was.

Q. And when did you move into 10 Monroe Street?

A. It was the spring of 1941—no, 1942. The spring of 1942.

Q. 1942?

A. That is right.

Q. So you lived there approximately nine years?

A. That is right.

Q. And during all of this time did you do the housekeeping?

A. Yes, I did.

Q. Did you do all the chores of a housewife?

A. Yes, I did.

Q. Cooking, washing, cleaning, darning, scrubbing?

A. Yes, I did.

Q. Did you hire any help throughout that period?

[fol. 1929] A. On occasion for brief periods. I know that when I came from the hospital after the birth of the first child I had some help for the first month, and then upon the time that the second child arrived, I had help for about two months, and there was a period when I was ill and that started about November 1944, I had to have help, right up to about the spring of 1945.

Q. Now, outside of these three periods you last mentioned, you did all the housework yourself?

A. That is right.

Q. Your laundry and everything?

A. That is correct.

Q. How many rooms did you occupy there?

A. Three rooms. It is called a three and a half room apartment, but it is actually three rooms plus a bathroom.

Q. And immediately after your moving into that apartment how was it furnished?

A. Well, two friends of ours, Harry and Sylvia Steingart were due to go to California for some job he had gotten, and at the time we had no furniture and we had very little money to really furnish a house properly, and they said that it would serve a two-fold purpose if we took their furniture; they wouldn't have to pay for storage, and we would have the use of their furniture. So we did that.

[fol. 1930] Q. And did you at that time buy anything new to furnish the home?

A. No, not upon our leasing the apartment. We simply furnished it with what they had; nothing else.

Q. Now, were there amongst the household furniture that you borrowed from your friends two tables?

A. No. There were three tables.

Q. Will you tell us just what tables you had borrowed from these friends of yours?

A. There was a rather rickety bridge table and there was a maple leaf table which was a nice solid piece. Then we had a dark stained, I think it was some kind of walnut table. It was a gate leg in not too good condition even at that time.

Q. And did you since the time you moved to the Monroe Street apartment until the time of your husband's arrest and your arrest acquire any other tables?

A. Yes. We acquired a console table that my husband purchased at R. H. Macy. A very inexpensive table, with a back that you could—sometimes it would stand up, and other times if we wanted to use it for eating purposes, it folded down.

The Court: Were you with him when he purchased it?

The Witness: No, I was not.

[fol. 1931] By Mr. A. Bloch:

Q. Were you at home when it was delivered?

A. Yes, I was.

Q. And did you see who delivered it?
A. Just the usual delivery person.
Q. Of R. H. Macy?
A. That is right.
Q. And can you recollect the year during which that table was acquired and sent to your home and received in your home?
A. Well, it was somewhere between, somewhere either 1944 or 1945.

By the Court:

Q. Do you remember whether you signed for it when it came or did your husband sign for it?
A. Oh, I think I signed for it when it came. It came during the day and I was home.

By Mr. A. Bloch:

Q. Did you acquire any other furniture to replenish the furnishings at the home during that period in which you were living at Monroe Street?
A. Well, my husband was employed somewhere where there was a man who had had certain specifications made for a piece of furniture and somehow they hadn't made the furniture as he desired it and he asked my husband to please take it off his hands, and we got that piece of furniture at the cost of delivery. It was what you call a breakfront. It [fol. 1932] has a black and white book case that fits onto a chest of drawers.
Q. Anything else that you bought or acquired during that period of nine years?
A. Well, we did get a second-hand piano, rather battered, for a very small cost from a neighbor in Knickerbocker Village. We also got a couple of children's chests, and I think four rush-bottom chairs also from a neighbor in Knickerbocker Village.
Q. Now, the secondhand furniture that you got at the time of your marriage or immediately afterwards: Were those pieces of furniture still in your apartment at the time of your arrest?
A. Well, the piano was and the two children's chests. I think two of the chairs had deteriorated and had been thrown

away. I think I had two left of those four, and the console table was in the house.

Q. Now, do you remember what you paid for the apartment when you first moved in?

A. I believe it was $41; $41.75.

Q. Did you say $40.75?

The Court: $41.

The Witness: $41, I think it was.

Q. And your rental was increased—

A. No; $45. That is right, $45.

[fol. 1933] Q. Was the rental increased from time to time until the present rental that was paid for June or July?

A. What was that?

Q. Was the rental raised from time to time until the last rental that was paid for June or July?

A. At the last it was $51.25.

Q. You had a telephone in the house?

A. Yes, we did.

Q. And you had electric current?

A. Yes.

Q. And gas?

A. That is right.

Q. Do you remember what the average bills for current and gas were per month?

A. Well, the electricity bill came with the rent bill. The corporation had some kind of arrangement.

Q. It was included in the rent?

A. That is right.

Q. How about your gas?

A. The gas bill was very small. I don't think it exceeded more than $2 a month.

Q. Have you any idea what the telephone rates were, the bills per month were?

A. Well, approximately the telephone bill ranged, oh, somewhere between $5 and perhaps $7 a month.

By the Court:

Q. Did your husband do any other shopping by himself for furniture on any other occasion?

A. He did buy something else. At the time I believe he [fol. 1934] bought a table.

Q. At the same time?

A. Yes.

Q. Was another piece of furniture purchased then?

A. I believe it was about the same time.

Q. What was that piece?

A. I am not sure.

By Mr. A. Bloch:

Q. If I should suggest a lamp, would that refresh your recollection?

A. It might have been. I remember there was some other item, but I couldn't——

Mr. Saypol: Well, I object to the suggestion. He might as well suggest a refrigerator.

The Court: All right. We will take it as a suggestion and the jury will understand where it came from.

By the Court:

Q. Let me ask you this.

A. Yes.

Q. Did you know that he was boing to make that purchase when he did make it?

A. Oh, yes, we had decided that we really needed a decent piece of furniture, at least a table, and so we did decide to make that expenditure.

Q. As far as you know, how much was that expenditure?

A. It was about $20 or $21. I remember that.

Q. Was there any sale on at the time.

A. Yes. He came home and told me he really made a good [fol. 1934a] buy; that it was——

Q. Did you know in advance? Was there something advertised in the paper? Was there a sale at Macy's?

A. I couldn't say. I really couldn't recall at this time whether I had noticed a sale or not. We had just decided we needed a table and he stopped in to Macy's and found a buy.

Mr. A. Bloch: Raise your voice, please.

The Witness: Yes.

[fol. 1935] By Mr. A. Bloch:

Q. What became of the other three tables, the ones you acquired at or about the time of your marriage?

A. Well, the bridge table was stored in the closet; after it got so rickety that we felt we just couldn't eat on it any longer, we kept it in one of the closets; and the maple leaf table was one of the pieces we sent back to Mr. and Mrs. Steingart in California.

Q. Was that a fairly good table?

A. Yes, that is right.

Q. What became of the other?

A. Well, the gateleg table was used in the kitchen and used in the living room, and finally I decided after the birth of the second child, when we were just too crowded between two children and two adults and all the paraphernalia, that we might just as well get rid of it. It was pretty well broken up by then anyway.

So I got rid of it, and a couple of other very old pieces. I sold those items to a second-hand furniture dealer, and I got all of $5 for all three items.

Q. Now, did you throughout the time you lived at Monroe Street have a typewriter in your house?

A. Yes, I did.

Q. When did you acquire that typewriter?

A. I must have been about eighteen years old. I was a [fol. 1936] member of the Clark House Dramatic Group, and one of the actors in that group had the typewriter and wanted very badly to get rid of it. So he sold it to me for $30 and I had it ever since.

Q. When you were eighteen years old?

A. That is right.

Q. Was this the same typewriter you had at 10 Monroe Street?

A. That is the same one.

Q. And was this the same typewriter you had until the summer of 1950?

A. That is right.

Q. And was this the same typewriter that was taken possession of by the FBI?

A. That is right.

Q. And is now in their possession?

A. That is correct.

Q. Now, when did you meet Julius?

A. I met him in the winter of 1936.

Q. Do you recall what he was doing at that time?

A. He was attending City College.

Q. Do you know how long he continued at that college?

A. Oh, until his graduation in, I believe it was, the spring or the end of the winter of 1939.

Q. Did you while he was attending college do any typing for him?

A. Yes, I did.

Q. That was before your marriage?

A. That is right. I knew him for two and a half years [fol. 1937] and I typed all the time.

Q. For him?

A. That is right. His engineering reports. That is right.

Q. Now, after your marriage to Julius, did you do any typing for him?

A. Yes, I did some.

Q. And what was the nature of the context of the matters that you typed for him?

A. Well, there were business letters. I remember when they were—when he was part of the United Purchasers and Distributors, I used to type up all the bids for various Government surplus material, and I also remember typing his letters in regard to reinstatement after he was dismissed by the Government.

Q. Did you at any time type any letters or communications embodying anything pertaining to the national defense?

A. No, I did not.

Q. Did you at any time type any matters that may be called information concerning anything relating to our national defense?

A. No, I did not.

[fol. 1938] By the Court:

Q. Did you know anything about the charges that had been leveled against your husband by the Government in '45?

A. There were no charges leveled against him by the Government in '45.

Q. What was that situation about? You say you did some typing for him in connection with——

A. Oh, you mean the time that the Government dismissed him?

Q. Yes.

A. Well, it was alleged that he was a member of the Communist Party.

Q. And he was dismissed for that reason?

A. I refuse to answer on the ground that this might be incriminating.

Q. No, no, no. I say, the Government dismissed him for that reason? I am not asking you whether he was. I am asking you whether the Government gave that as a reason for his dismissal.

Mr. A. Bloch: May I advise the witness to answer that question.

A. Well, they gave that as a reason, that is right.

Q. Now, you typed the reply for him; is that right?

A. Yes.

By Mr. A. Bloch:

Q. And subsequent to the——

The Court: Excuse me, Mr. Bloch. I am not finished.

[fol. 1939] Mr. A. Bloch: I beg your perdon.

By the Court:

Q. And the reply which you typed denied that he was a Communist; is that correct?

A. I refuse to answer on the ground that this might be self-incriminating.

Mr. A. Bloch: I advise you to answer.

The Court: May we have the answer? Your lawyer says——

A. Yes.

Q. Do you understand my question?

A. Would you please repeat it?

The Court: Will you read that back, please.
Q. (Question read.)
A. That is correct.
Q. And was that true?

Mr. A. Bloch: I object to it.
The Court: Upon what ground?
Mr. A. Bloch: Upon the same ground urged by my son, when that question was asked of the defendant Julius Rosenberg.
The Court: Well, no, I think then there was a privilege asserted, Mr. Bloch. There was a privilege asserted.
Mr. Saypol: That is why I arose, if the Court please.
[fol. 1940] The Court: It was not an objection.
Mr. E. H. Bloch: May I say something? Pardon me, may I say something? I would like to preserve the record, your Honor. You see, I objected to it on a legal ground, and you overruled me.
The Court: You objected that it wasn't relevant.
Mr. E. H. Bloch: That is correct.
The Court: I overruled it on that basis. If that is your objection, I will overrule it on that basis, too.
Now we have the question of privilege.
Mr. Saypol: She hasn't asserted it, if the Court please.
The Court: I know she hasn't.
Do you want to hear my question read back?
The Witness: Yes.
The Court: Will you read the question, please.

Q. (Question read.)

A. Was *w*hat true?
Q. The statements which you typed, that he is not a Communist?
A. Again, I refuse to answer on the ground of self-incrimination.
The Court: All right.

Mr. Saypol: I suggest that the witness has no privilege.
[fol. 1941] The Court: The witness has a privilege if it would incriminate her.
Mr. Saypol: She is asked about the answer that her husband gave.

The Court: Well, she was a party; she had typed it and she may feel that her typing might in some way incriminate her.

Mr. Saypol: The Court then overrules my request? I want the record to show that I didn't abandon the position that I take.

The Court: Well, as I understand your position, you are not pressing any of these questions where the witnesses assert their privilege.

Mr. Saypol: On the Court's observation I will not press it.

The Court: Yes.

By Mr. A. Bloch:

Q. Now, we will go back to the time that you had finished your course in a business school. What, if any, employment did you get?

A. Well, I was employed as a clerk by the National New York Shipping and Packing Company.

Q. For how long?

A. Oh, somewhere about three years, perhaps not quite three years.

Q. Was it a full-time job or a part-time job?

[fol. 1942] A. Well, it varied from time to time. Sometimes it was a part-time job; sometimes it was full-time; sometimes it was full-time with a lot of overtime.

Q. During that period of three years, were you employed part time by any other firm?

A. Well, I wasn't employed by a firm, but I did do professional singing during that period.

Q. After you left the employ of the firm you just now mentioned, the National, where did you work, or what employment did you get?

A. Well, I worked at the Bell Textile Company, for whom I had previously worked, also, from time to time, on and off, on a part time basis, and now I was employed full-time by the Bell Textile Company.

Q. How long did you continue in their employ?

A. Until the end of May 1940, when I left.

[fol. 1943] Q. That was about a year after you were married?

A. That's right.

Q. During the time you worked in those two places mentioned and at the time you did singing, what if anything did you do with your income and your earnings prior to your marriage?

A. Except for carfares and lunches, it was turned into the family.

Q. Now, were you at any time during that period a member of the Henry Street Settlement?

A. Yes, I was.

Q. What sort of an organization was that?

A. That was a dramatic group. I also had a scholarship there, to take dramatic courses and modern dancing, which I did.

Q. After your marriage and before the birth of your first child, what if anything did you do with your spare time?

A. What time was that, again?

The Court: After your marriage.

Q. After your marriage and prior to the birth of your first child, what if anything did you do with your spare time?

A. Well, I was a member of the Ladies Auxiliary of the Federation of Architects and Engineers, which was my husband's union, and I did a lot of typing for them; and I also was the secretary at the East Side Defense Council, which [fol. 1944] was the neighborhood branch of the official Civilian Defense Organization, Volunteers Organization, C. D. V. O., at Park Avenue, and that entailed a lot of typing and various other activities at the Civilian Defense.

Q. Did you take some of that typing home with you, or the matter which you typed, home with you?

A. Sometimes I did, yes.

Q. Were you also a member of any union during that period of time when you were employed?

A. Yes, when I worked

Q. What union did you belong to?

A. Well, when I worked at National Packing, I was a member of a shipping clerks union, which was seeking to affiliate with the International Ladies Garment Workers' Union, and when I worked at the Bell Textile Company, I was a member of Local 65 of the United Wholesale and Retail.

Q. Were you active in the union?
A. Yes, I was.
Q. Did you do any typing for the union?
A. No, I didn't do any typing for them.

Mr. A. Bloch: I wonder if I should go into the main part of my direct examination this afternoon.

The Court: Let us complete the Rosenberg phase of it.

[fol. 1945] Mr. A. Bloch: I thought I had reached the end of a topic.

The Court: We can complete the examination then of Mr. Rosenberg.

Will you step down, please?

(Witness temporarily excused.)

Julius Rosenberg resumed the stand.

Mr. Saypol: May the record show that the photographs that Mr. Bloch requested have been delivered to him.

The Court: Yes.

Mr. Saypol: That is, those that were taken from the home of the Rosenbergs at the time of the arrest.

Mr. E. H. Bloch: May I suggest to the clerk that all of this be marked as one exhibit, I mean for identification. Will you mark, please, all of this as one exhibit. We will put it in an envelope.

The Court: Mark the envelope.

Mr. E. H. Bloch: Mark it just "Assorted Photographs."

(Marked Defendants' Exhibit 1 for identification.)

Redirect Examination (Continued)

By Mr. E. H. Bloch:

Q. I show you a number of pictures, all of which have been taken together and marked Defendants' Exhibit 1 for identification, and ask you, Mr. Rosenberg, whether you can [fol. 1946] recognize those pictures (handing to witness)?
A. Yes, I do.

Mr. Saypol: Have you looked at all of them?

The Witness: No, they are some of the pictures that were in my house at the time the FBI came.

The Court: All of the pictures you identify there as having been in your home?

The Witness: Do you want me to look through all of them?

The Court: Well, look through all you find necessary to identify as being in your home.

Is there any question about that?

Mr. Saypol: I didn't want the state of the record to be that he identified each of them. If he is testifying that he recognizes a batch as the batch that was taken, then the record is clear.

Mr. E. H. Bloch: That is the only question I have to ask of this witness, and I now ask that these photographs be offered in evidence.

Mr. Saypol: That I would object to.

The Court: I will sustain that objection, offering old pictures. We are not interested in seeing a lot of photographs of people that might have nothing to do with the case.

Mr. E. H. Bloch: Well, except that there are certain [fol. 1947] questions asked by Mr. Saypol on cross-examination with respect to the taking of certain photographs.

The Court: Yes, I want to ask one question.

Mr. Saypol: I will ask him one question on recross, when I get there.

The Court: Are you finished?

Mr. E. H. Bloch: I am finished.

Recross Examination

By Mr. Saypol:

Q. Are the photographs in that batch, which you took May, 1950 at 99 Park Row, which I described as passport photographs?

A. There are a lot of photographs that aren't here, that we have taken.

The Court: Well, he is asking you whether those photographs are there, those that you took in May or June?

The Witness: No, I don't see any photographs that I took.

The Court: In May or June, 1950?

The Witness: That's right.

Q. Are the photographs there that David Greenglass says he took for passport photographs, that he says he gave to you?

A. I don't notice any photographs there.

Mr. Saypol: That is all—one question, if I may ask it.

The Court: Pardon?

Mr. Saypol: One question if I may ask it?

[fol. 1948] Q. Is or was your wife a member of the Communist Party?

A. I refuse to answer on the ground it might tend to incriminate me.

Mr. Saypol: Very well, I don't intend to press it.

The Court: Wait a minute. You are not going to press for an answer?

Mr. Saypol: No, I don't think so.

The Court: You may step down.

(Witness excused.)

The Court: (To the jury). I want you to make your arrangements accordingly. There is every indication now that this case might go to you sometime Wednesday afternoon, so I would make my plans accordingly. The chances are, you might be here a little beyond the regular hours at night, because I might charge you sometime during the course of the afternoon, so that you might tell the respective members of your family that you might be delayed.

We will recess until 10:30 tomorrow morning.

(Adjourned to March 27, 1951, at 10:30 a.m.)

[fol. 1949] New York, March 27, 1951,
10.30 o'clock a.m.

Trial resumed

ETHEL ROSENBERG, resumed the stand;

Mr. E. H. Bloch: May I address the Court?

The Court: Yes.

Mr. E. H. Bloch: You will recollect that Mr. Kelly of R. H. Macy Company was a witness yesterday, and by reason of telephone conversation that he made to me, and I understand, also, to Mr. Saypol, he indicated an interest in coming back here this morning to testify on one minor matter, and I was wondering whether the Court, in view of the fact that he is a busy man, would permit him to go on now just for about a moment? I think it will take two or three questions and we will be through with him.

Mr. Saypol: I think Mr. Bloch can state the fact for the record and we don't have to go through the procedure.

The Court: Yes, why don't you do that? Then you can both agree.

Mr. E. H. Bloch: Well, you check me Mr. Saypol. I [fol. 1950] don't know what Mr. Kelly said to you, but Mr. Kelly testified yesterday——

The Court: Well now, I will tell you what we ought to do; Why don't you write it out, if it is very short, write it out, give it to Mr. Saypol before the morning is over or before the recess, just write it out and give it to Mr. Saypol and go over it. Then you will read it into the record.

Mr. E. H. Bloch: I just want to make sure, if there is any controversy, Mr. Kelly won't be——

The Court: Don't tell us what he testified to. What are you going to add now to the testimony?

Mr. E. H. Bloch: All what we are going to add, your Honor—I think we can take care of this in two minutes—is that in 1944 Macy's had their own delivery service, and as a consequence of his investigations, as he testified yesterday, those records are not available any more. He testified that in '45 they had the United Parcel Service. He now states that in 1945 Macy's also had their own delivery

service and that they are not available. That is his entire change of testimony.

The Court: All right.

Mr. Saypol: Perfectly satisfactory.

The Court: Well, do you agree, if he were recalled to the stand, he would so testify?

[fol. 1951] Mr. E. H. Bloch: So testify, and I wonder whether the Court will tell Mr. Kelly that he no longer has to stay here?

Mr. Saypol: In order to save time, in order to avoid a direct question, or rather, cross examination, I will make a statement to ascertain from Mr. Kelly it is the fact and that will save putting him on, and that is that anybody can walk into R. H. Macy now and make inquiry of the facts testified to by Mr. Kelly, and assert that those records are non-existent for the years '44 and '45.

Mr. E. H. Bloch: I don't understand the import of the statement, but inquiries were made by the defense and R. H. Macy was subpoenaed.

Mr. Saypol: Is that acceptable, though?

Mr. E. H. Bloch: Yes, sure.

The Court: All right.

Mr. A. Bloch: May I proceed?

The Court: Proceed.

Direct examination continued.

By Mr. A. Bloch:

Q. Mrs. Rosenberg, I call your attention to the testimony given by your sister-in-law, Ruth, that on an occasion in November, 1944, when she was about to visit her husband at Albuquerque, she had a conference at your home, and at that conference you and your husband per-

[fol. 1952] suaded her against her will or inclination to enlist her husband in espionage work, and I ask you whether on that occasion or any other occasion you persuaded or attempted to persuade your sister-in-law to enlist her husband in espionage work?

A. I did not.

Q. Your sister-in-law testified that this conference or conversation was prefaced by a remark made by your husband, Julius, that she, your sister-in-law, might have noticed

that for some time he and you had not been actively been pursuing the Communist party activities, that you didn't buy the Daily Worker at the usual newsstand, and that for two years your husband had been trying to get in touch with people who would assist him to be able to help the Russian people more directly, other than just his membership in the Communist Party; was there ever any such conversation at any conference at which you were present?

A. No, there was not.

Mr. Saypol: What page?

Mr. A. Bloch: Page 972.

[fol. 1953] Q. She further testified that your husband kept on and told her that he knew that David was working on the Atomic bomb and that she asked him how he knew. Did any such conversation occur or did you ever hear any such conversation?

A. No, I did not.

Q. Did you ever participate in any such conversation?

A. No, certainly not.

By the Court:

Q. Did you know that your brother was working on the atomic bomb project?

A. No.

Q. When did you find out about that for the first time?

A. Oh, when he came out of the Army.

Q. You mean in 1946?

A. Yes.

Q. Did you know that he was working on a secret project while he was in the Army?

A. Well, he told us that when he came in on furlough.

Q. When?

A. At my mother's house.

Q. In January 1945 or in November 1944?

A. I don't know the exact date of the furlough, but the first time.

Mr. A. Bloch: May I ask you to keep your voice up, please?

The Witness: Yes, I am sorry.

Q. Did he say what that secret project was?

A. No, he did not.

[fol. 1954] By Mr. A. Bloch:

Q. She further testified, and when I say "she" I mean your sister-in-law, that she had received an affidavit from the War Department telling her that her mail to David would be censored and that his mail to her would be censored because he was working on a top secret project.

Was any such talk ever had at that conference on that occasion or any other occasion?

A. No, no such talk.

Q. She further testified, page 973, that your husband said that his friends had told him that David was working on the atomic bomb, that the atomic bomb was the most destructive weapon used so far, that it had dangerous radiation effects, that the United States and Britain were working on this project jointly, and that he felt that the information should be shared with Russia who was our ally at the time, because if all nations had the information, then one nation couldn't use the bomb as a threat against another. Did you ever overhear any such conversation?

A. No.

Q. At any time in any place?

A. No, I did not.

By the Court:

Q. Well, what were your own views about the subject [fol. 1955] matter of the United States having any weapon that Russia didn't have at that time? That is, in 1944 and 1945?

Mr. A. Bloch: May I respectfully object to your question?

The Court: Yes. Objection overruled.

Mr. A. Bloch: As incompetent, irrelevant and immaterial.

The Court: It is most relevant. It goes to the matter of the state of mind, and intention has to be established in this case.

Mr. A. Bloch: I except.

(Last question read at the request of the Court.)

The Witness: I don't recall having any views at all about it.

Q. Your mind was a blank on the subject?

A. Absolutely.

Q. There were never any discussions about it at all?

A. Not about that, not about the weapon.

Q. Was there any discussion at all as to any advantages which the United States had to make warfare that the Russians didn't have?

A. No, nothing of that sort.

Q. You never heard any discussions that there should be some equalization between Russia and the United States?

A. No, sir.

[fol. 1956] By A. Bloch:

Q. Your sister-in-law further testified that at first she objected to proposing what you proposed to her husband and that she didn't think it was right and that then she decided to give her husband a message and that your husband told her the things he wanted her to ask her husband to get the information that he wanted to bring back, he wanted your sister-in-law to bring back.

Were you ever present at any such conversation?

A. No, I was not.

Q. Did you ever participate in any such conversation or any such conference at which these things were discussed?

A. No, I did not.

Q. Your sister-in-law further testified that he said on that occasion that he wanted a physical description of the project at Los Alamos, that he wanted the approximate number of people employed, the names of some of the scientists who were working there, something about whether the place was camouflaged, what the security measures were, and the relative distance of the project from Albuquerque and Santa Fe and that when she got the information she was not to write it down or make a memorandum of it, but to memorize it.

Were you ever present at any conversation in which what I have just now read was discussed or mentioned?

[fol. 1957] A. No, I was not.

Q. Or argued about?

A. No.

Q. Did you ever talk to your sister-in-law either in the

presence of your husband or in his absence about anything that was transpiring at Los Alamos or in any part of New Mexico or in any factory or Government project?

A. No.

Q. Referring to or discussing information to be obtained to be transmitted either to your husband or to any of his emissaries?

A. No, sir.

Q. Now, do you recall the time when your brother Dave came on his first furlough?

A. Yes.

Q. The date has been mentioned here as sometime in January 1945, and her testimony is that on that occasion when he came, page 985, she testified in substance and your Brother Dave testified in substance, that they came on that occasion to your home for dinner and that there was present there a woman named Ann Sidorovich, and on that occasion there was some light talk in the presence of Ann Sidorovich, and Ann Sidorovich left the apartment, and that upon her leaving your home your husband said that he had invited Ann Sidorovich to your home so that the Greenglasses would be able to recognize her and know her when she would come to procure information concerning the Los Alamos Project at some future date, and that [fol. 1958] Ann Sidorovich would come to meet your sister-in-law in a theatre in Denver, where Ann Sidorovich and your sister-in-law would exchange purses, and your sister-in-law's purse would have in it written information that David would give concerning the Los Alamos Project.

Was there any such talk had at any time in your presence?

A. No.

Q. Do you remember the occasion when your brother and sister-in-law came to your home for dinner during his first furlough?

A. Yes, I do remember that.

Q. Do you recall whether on that occasion Ann Sidorovich was present in your home?

A. She may or may not have been. I really don't recall that.

Q. Now, how long had you known Ann Sidorovich?

A. Well, they had moved into Knickerbocker Village

a few months after we did and we became neighbors. We moved in in the spring of 1943 and they moved in later in 1943.

Q. How long did they live in that house?

A. About a year.

Q. Are you sure it was in 1943 you moved into that apartment?

A. No, no. I gave birth to my first child in 1943. It was 1942. 1942.

Q. Was that the year in which Ann Sidorovich moved [fol. 1959] into one of the apartments in the same building?

A. Yes, that is the year, 1942.

Q. And who lived there first? You or the Sidoroviches?

A. We did.

Q. For how many months, if you can recall?

A. I can't recall exactly how many months.

Q. And how long did the Sidoroviches live in that house?

A. About a year.

Q. And then they moved?

A. Yes.

Q. Where did you meet Ann Sidorovich? How did you come to meet her?

A. Well, I had met her husband at the Federation of Architects and Engineers, and once I was walking down to the East Side defense counsel and I ran into her husband on the street and he had a young lady with him whom he introduced to me as his wife Ann.

Q. Now, after the Sidoroviches moved away from this Knickerbocker Village house did you visit them, the Sidoroviches, or did they visit you?

A. Both.

Q. And you kept on the friendship that had been formed while they were your neighbors?

A. That is right.

Q. And of course, you knew that Michael Sidorovich, the husband of Ann Sidorovich—is that his name, Michael?

A. That is right.

Q. —had been a classmate of your husband's?

A. Yes.

[fol. 1960] Q. Now, you say you don't recall whether or not on the occasion of your brother's and sister-in-law's

visit to you in January 1945 Ann Sidorovich was or was not there?

A. No, I couldn't say.

Q. Now, your sister-in-law testified that your husband suggested a tentative plan and a possible meeting at Albuquerque instead of Denver, and that it was then decided to meet in a specific Safeway store. Was any such arrangement or suggestion made by your husband in your presence at any time?

A. No, it was not.

Q. Either on the occasion in January 1945 or on any other occasion?

A. No, it was not.

[fol. 1961] Q. Did your husband on that occasion or any other occasion say, in words or in substance, that either Ann Sidorovich or someone else would be one to come to Albuquerque to meet your sister-in-law?

A. No, he did not.

Q. Was there any such conversation had in your presence as to making plans or tentative plans to have somebody sent by your husband or by you to meet someone else, either in Albuquerque or in Denver, or anywhere else, in order to exchange information or procure information to be transmitted to your husband or some emissary of your husband?

A. There were never any plans.

Q. Your sister-in-law further testified that in order to arrange for an alternative plan or effectuation of this plan of exchanging and getting information, you, your husband and your sister-in-law went into the kitchen of your apartment, and that your husband took the side of a Jello box and cuit it in an odd fashion and he gave your sister-in-law one-half and he said, "This half will be brought to you by another party and he will bear the greetings from me and you will know that I have sent him"; was there any such thing?

A. No such thing ever happened.

Q. Did any such thing ever happen?

A. No, it did not.

[fol. 1962] Q. Did you ever hear of any such thing as a Jello box being cut in two in order to be a means of identification of any emissary or agent to be sent by your

husband out West in order to get information from the Los Alamos project?

A. Outside of this courtroom, I never heard of any such thing.

The Court: Incidentally, did you have any Jello boxes in your apartment?

The Witness: Oh, yes.

Q. Your sister-in-law had testified that she remembers that Julius, your husband, said on that occasion that this idea of the Jello box means of identification was a simple thing and that the simplest things are always clever; did your husband say that at any time in your presence?

A. No, he did not.

Q. Were you ever told by anyone that your husband made that remark?

A. No.

Q. Were you ever told by anyone that there was such a thing as a Jello box cut in two and split up, one retained by your husband and the other given to your sister-in-law as a means of identification of somebody who was to come as an emissary of your husband to procure information concerning the Los Alamos project?

A. I was never told of any such thing.

[fol. 1963] Q. Your sister-in-law further testified that on that occasion she overhead Dave and Julius talk about how the bomb was detonated; did you ever hear any such conversation between Dave and your husband, at any time?

A. I certainly did not.

Q. In January, 1945, or at any other time?

A. No, I did not.

Q. It was further testified to by your sister-in-law that a day before that visit for dinner, or the morning of the day on which the visit was made, information had been given to your husband by Dave in writing; were you ever told that any such information was given to your husband?

A. No, sir.

Q. And that on that evening, upon the occasion of the visit, somebody said——

Mr. A. Bloch: Page 990.

Q. —"Ethel"——

Mr. A. Bloch: I withdraw that.

Q. Your sister-in-law testified that on that occasion you said that you were very tired and that she asked you what you had been doing and that you said you had been typing, and that she asked you if she had found David's notes, containing the information about the atomic bomb and the project at Los Alamos, hard to distinguish; did you ever at that time, on that occasion or any other occa- [fol. 1964] sion, tell your sister-in-law or anyone else that you had been typing information concerning the atomic bomb or any other thing with respect to the Los Alamos project?

A. No, I never did.

Q. Did you ever type any such information?

A. No, I never did.

Q. Or copy any writing that was purported—that had been made by your brother, in which information concerning the atomic bomb was alluded to?

A. I never did.

Q. She further said that upon her inquiring of you why you were tired and upon your giving her the information that you were tired, because you were kept busy typing and copying, that you said that you were used to your brother's handwriting and that you could easily copy it; did that thing ever occur?

A. No, it never did.

Q. Did you on that occasion or any other occasion tell your sister-in-law that Julie, referring to your husband, was tired; that he was very busy; that he ran around a great deal; that all his time and energies were used in this thing, referring to transmission of information; that that was the most important thing to him; that he was away a good deal and spent time with his friends; that he had to make a good impression; that it sometimes cost him as much as $50. to $75. an evening to entertain his friends; [fol. 1965] did you ever say anything like that, either in words or in substance, to your sister-in-law or anyone else?

A. No, I never did.

Q. She further testified that on that occasion she said that she expected to be very lonely in Albuquerque and that

you said to her that she would make friends, that after a while she would probably meet other people there from New York, insinuating that those people would be people sent by your husband to get information; did you ever say anything like that to her, in words or in substance?

A. No, sir; I did not.

Q. She further testified that she, your sister-in-law, said on that occasion that she was worried; that she just lost her job and she didn't know how she was going to manage to live until David should find a place for her to live in Albuquerque; that Julius then said not to worry about that, that he would take care of her expenses; that the money was no object; that the most important thing was for her to go to Albuquerque to live, in order to get the information; did you ever participate in any such talk?

A. No, I did not.

Q. Did you ever hear your husband say anything to that effect?

A. No, I never heard him.

Q. She further testified, in general, that throughout that evening your husband tried to induce your sister-in-law [fol. 1966] to go to Albuquerque and live with her husband there in order to procure the information; did you get my question?

A. Yes. He did not.

Q. Now, going back to November, 1944, your sister-in-law testified that either you or your husband, I don't remember which, she said, gave her $150; did you ever give her $150?

A. No, I never did.

Q. Did your husband ever give her $150, in your presence?

A. No, he did not.

Q. Did your husband ever tell you that he had given her $150?

A. No.

Q. Did your sister-in-law or your brother ever tell you that he had received or that his wife had received $150?

A. No.

Q. Did you or your husband on that occasion or on any other occasion try to induce your sister-in-law to go out and live with her husband in Albuquerque?

A. No, I never did.

Q. As a matter of fact, you know that on a prior occasion, when your brother Dave was stationed at another post, your sister in-law had lived with him at that post?

A. Yes, I knew that.

Q. And that was in California?

A. That's right.

Q. And that she had been out there with him for about three months?

A. Yes, she was out there with him for some time.

[fol. 1967] Q. And that was long before November, 1944?

A. Oh, yes.

Q. Now, your sister in-law testified, in substance, that she had a miscarriage some time after she had been living with her husband in Albuquerque, and that she had written you a letter in which she informed you of the fact that she had had a miscarriage, and that thereupon she received a response from you in the shape of a letter, in writing, in which you said, in substance, that soon a relative will come to visit her, and insinuated that that was a sort of a signal, or that the word "relative" had some meaning, transmitting to her the idea that somebody was going to come to see her and receive information; did you ever write a letter containing a phrase that a relative would come to see her?

A. No, I did not.

Q. Did you ever make an arrangement with her or anybody else, or did your husband, in your presence, ever make an arrangement with her or anybody else that if the phrase "relative" would be used in any letter, it would mean as an identifying mark, and that it would refer to somebody, an emissary of your or your husband's coming over to get information?

A. There was never any such talk.

A. There was never any such arrangement.

[fol. 1968] Q. You corresponded with your sister in law during the time that she was living with her husband at Albuquerque?

A. Yes, I wrote her occasionally.

Q. Do you know how long she lived there with her husband? The testimony is, she went there about the end

of February or the beginning of March, 1945, and stayed there for approximately a year or so; is that correct?

A. Yes, that is correct.

Q. And during that time did you communicate with her?

A. Yes, occasionally.

Q. Did you also communicate with your brother?

A. Yes, I did.

Q. Now, your brother, Dave, was the youngest in the family?

A. That's right.

Q. And you were six years older than he was; and what was the relationship between him and you throughout the period of your living together in the same household, until you married and after you married?

A. Well, he was my baby brother.

Q. Did you treat him as such?

A. Yes, that is exactly how I treated him.

Q. Did you love him?

A. Yes, I loved him very much.

By the Court:

Q. Did he sort of look up to you?

A. Yes.

[fol. 1969] Q. And your husband? Before the arguments that were discussed here in court?

A. He liked us both. He liked my husband.

Q. Sort of hero worship?

A. Oh, by no stretch of the imagination could you say that was hero worship.

Q. You heard him so testify, did you not?

A. Yes, I did.

By Mr. A. Bloch:

Q. And it is not correct, is it, that there was any hero worship there between Julius and your brother or your brother and Julius?

A. It certainly is not correct.

Q. No. And when your brother went into the Army in 1943, you corresponded with him?

A. Yes.

Q. And you also corresponded on behalf of your mother?

A. Yes, I did.

Q. Your mother can't write English very well, can she?

A. No, she can just about sign her name.

Q. So you were sort of a secretary on behalf of your mother?

A. Of both my mothers, yes.

Q. And when your sister-in-law went to live with her husband, your brother, you continued writing to her?

A. Yes, I did.

Q. Now, can you give us an idea of what you wrote about when you did write to your brother and to your sister-in-[fol. 1970] law?

A. Well, I wrote the usual "How are you? We are all right"; and "Take care of yourself"; and "This one had a baby," or "the other one got married," and things of that sort.

Q. Did you ever, in any letter written to your brother or to your sister-in-law, refer to any matter pertaining to information concerning either the atomic bomb or any other instrument manufactured or used for national defense?

A. You mean, was there any such correspondence?

Q. Did you ever write in any letter the substance of what I just now said?

A. Oh, no; no, I never did.

Q. Tell me, did you ever know a man by the name of Yakovlev?

A. No, I never did.

Q. Did you ever know a man by the name of Golos?

A. No, sir; I never did.

Q. Did you ever know a woman named Bentley, who was on the stand here?

A. No, I never did.

Q. Did you ever hear of those people at any time before this case broke?

A. I read about them in the newspapers.

Q. Did you know a man by the name of Harry Gold?

A. No, I did not.

Q. Did you know a man by the name of Fuchs, Dr. Fuchs?

A. Not until I saw his name in the newspaper.

[fol. 1971] Q. And the same thing with Gold, you never knew of him until you read about it in the newspapers?

A. That is right.

Q. Did you ever know anybody who was referred——

Mr. Saypol: Will you be good enough, Mr. Bloch—will the Court direct counsel fix the date when she read about these things in the newspapers?

Mr. A. Bloch: Wouldn't that be a subject of cross examination, your Honor?

The Court: All right, go ahead.

Mr. A. Bloch: Will you, Mr. Reporter, kindly repeat that question?

(Question read.)

Q. (Continuing) —referred to as a Russian?

A. No.

[fol. 1972] Q. Did you ever know any Russian at all?

A. No, I never did.

By the Court:

Q. You didn't know any Russian?

A. No, I didn't know any Russian.

By Mr. A. Bloch:

Q. Did your husband ever introduce you to somebody who was Russian?

A. Not that I know of.

The Court: Well, I think her husband said he didn't know any Russians either.

Q. Did your husband ever mention to you the fact that he was in touch with Russians.

A. No, he never mentioned any such thing.

Q. Did your husband at any time ever mention to you that he was engaged in any spying or espionage work or transmitting information received from various sources or from any source to the Russians?

A. He wasn't doing any such thing. He couldn't possibly have mentioned it to me.

Q. Now, will you be good enough to tell us the condition of your health in the fall of 1944 and part of the year 1945?

A. Well, it so happens that I have had a spinal curvature since I was about 13 and every once in a while that has given me some trouble, and at that time it began to kick up again, and occasionally I have to get into bed and nurse [fol. 1973] a severe backache. Through the bargain, I de-

veloped a case of low blood pressure, and that used to give me dizzy spells, sometimes to the point where I almost fainted. I also had very severe headaches, and it finally got so bad that I went to visit my doctor.

Q. Who is your doctor?

A. Doctor Max Lionel Hart of Rego Park, Long Island.

Q. Is Dr. Hart one of the witnesses listed as a Government witness in this case?

A. Yes, he is.

The Court: What is the point there? Why ask her that question? What is the relevancy of that?

Mr. A. Bloch: Why not?

The Court: You mean to say that the Government has to call every witness listed on that?

Mr. A. Bloch: I didn't say anything of the kind. I am just identifying the man. That is all.

The Court: All right. Go ahead.

(Last question and answer read.)

Q. And how long between that period, between the fall of 1944 and the middle of 1945 were you under Dr. Hart's care, professional care?

A. Well, I used to go for iron injections once or twice a week, at least once a week and very often twice a week regularly.

Q. And that was during the period in which you claim [fol. 1974] to have participated in this espionage plan?

A. Well, that was the period between the fall of 1944 and the spring of 1945.

Q. You were ill in November 1944, weren't you?

A. Yes.

Q. You were ill in January 1945, weren't you?

A. I wasn't well at any time during those months.

Q. Now, during that period how old was your first born baby?

By the Court:

Q. But you saw your brother, didn't you, when he came in on his furlough in January, 1945?

A. Yes, I did.

(Last question read.)

The Witness: It was right after he was a year and a half old. From a year and a half to the time he was two.

Q. And what was the condition of your child's health?

Mr. Saypol: I object to this line of questioning on the ground it is irrelevant. I have refrained from objections.

The Court: I think we have permitted you to go here far enough on this, Mr. Bloch.

Mr. A. Bloch: Well, I won't go much further, but I am going to urge this question, if your Honor please.

[fol. 1975] The Court: Is this the last one on the subject?

Mr. A. Bloch: I hope so.

The Court: Go ahead.

Q. Will you answer the question?

A. Yes. The condition of my child was very poor. I had had a very difficult time ever since his birth, I mean, with him. He was given to severe cold and sore throat with high fever. It wasn't the usual thing of where a baby gets sick occasionally. It was practically every week in and week out. By the time he was a year and a half old, that winter was extremely severe, the winter between the time he was a year and a half to two.

Q. 1944 and 1945?

A. That is right.

Q. Now, I promised the Judge that this would be the last question and I will keep my promise. Going down to the fall of 1945, the testimony here has been, September of 1945, your brother then came to New York on a furlough. This is the second furlough, right?

A. Yes.

Q. And it has been testified to by both your brother and your sister-in-law that when he came he brought along information concerning the atomic bomb and gave that information to your husband and that he had also drawn a sketch, a cross-section sketch of the atomic bomb and had given that to your husband and that he had also written out [fol. 1976] instructions and explanations concerning the atomic bomb, filling I think he said 12 pages of matter, and it was testified, page 1010, that David—at least that is what your sister-in-law testified to—David gave Julius the written information and Julius said he was very pleased

to get it, and on the occasion of a visit in your home he went into another room and read it over; and after he read it he said this had to be gotten out immediately and your husband wanted you to type it right away. Is that a fact or is it not a fact?

A. It is not a fact.

Q. Did you ever hear any such thing about your being asked immediately to type information concerning the atomic bomb or any other information that had been transmitted by your brother to your husband?

A. No.

Q. Did you ever type any such information?

A. No, I never did.

Q. Was there ever handed to you any sheaf of papers consisting of 12 pages or any other number of pages with instructions to copy it?

A. No.

Q. Did you ever copy any information concerning the atomic bomb or any other secret in September 1945 or at any other time?

A. No, I never did.

Q. Your sister-in-law further testified that Ethel got out a typewriter and sat down to work on the notes. Did that [fol. 1977] ever happen?

A. No, it did not.

Q. And where was the typewriter placed, your sister-in-law was asked, and the answer was on the bridge table. Did you have a typewriter on that occasion or on any other occasion on the bridge table or copy anything concerning the atomic bomb?

A. No, I never did.

Q. Your sister-in-law further testified while Ethel was typing the notes and David was helping her when she couldn't make out his handwriting, and explaining technical terms and spelling them out for her, Julius and I, I meaning your sister-in-law, helped her with the phraseology when it got a little too lengthy, wordy. Did any such thing occur?

A. No, it did not.

Q. Then she said when you had typed and copied these notes Julius burned the original notes in the kitchen and he flushed the ashes in a bowl. Did you ever see your hus-

band burn notes pertaining to the national defense and flushed the ashes in a bowl?

A. No, I did not.

Q. Any bowl? Your sister-in-law further testified that on that occasion Julius gave Dave $200. Did you see your husband give Dave $200?

A. I did not.

Q. On that occasion?

A. No.

Q. Were you told by your husband or anyone else that [fol. 1978] Julius had given your brother $200?

A. I never heard any such thing.

Q. Did your brother ever tell you that he got $200 from Julius?

A. No, he did not.

Q. On that occasion or any other occasion?

A. No.

Q. Did your sister-in-law ever tell you that her husband got $200?

A. No, she did not, either.

Q. Was there anything either expressly or by implication conveyed to you in September 1945 or at any other time that your husband was engaged in espionage and that he was getting information from different sources and transmitting that information to Russia or Russians, whether the U.S.S.R. or Russian officials?

A. No, nobody ever told me any such thing.

Mr. A. Bloch: Your Honor, do you want to suspend a few minutes now?

The Court: Well, I thought you were going to be very brief, you told me, on this examination.

Mr. A. Bloch: Well, I think that I can't adequately get in her denial——

The Court: I think it is covered, Mr. Bloch. If I may suggest, instead of each particular detail I am sure Mr. Saypol would have no objection to a blanket question concerning this material.

Mr. A. Bloch: Well, may I say to you that I have covered [fol. 1979] the major portion of her testimony and there are only three or four items that I want to cover.

The Court: Well, we will take a recess but I find this:

I find that most lawyers, and I was probably guilty of it myself when I was practicing law——

Mr. A. Bloch: I know you were.

The Court: (Continuing) You think you are going to do something in a brief period and you usually find that you like the sound of your voice, and before you know it you double the time you have asked for. So I say this now in advance in connection with the summations which are going to take place, that you all have an allotted time and I am going to hold you to it. That goes for everybody. The Government as well as the defense are going to be held to your allotted time. I do hope you draft your summations in accordance with the time allotted.

Mr. A. Bloch: I am going to sit down tonight and draft it.

The Court: Well, we will take a recess at this point, and see whether you won't follow my suggestion.

Mr. A. Bloch: I will try to.

(Short recess.)

[fol. 1980] By Mr. A. Bloch:

Q. Mrs. Rosenberg, the testimony show- that your brother left the Army in February, 1946.

A. Yes.

Q. Now, was there an occasion after he left the Army when your brother and his wife stayed at your home for about nine or ten days?

A. Yes, there was.

Q. Do you recall what part of the year that was in?

A. Yes. That was at the end of February or the beginning of March.

Q. You and your husband went out of town for nine or ten days?

A. Yes, and the child.

Q. And the child?

A. That is right.

Q. Where did you go?

A. We went to a place called Rivercrest Inn that overlooks the Hudson.

Q. And you stayed there you say for nine or ten days?

A. That is right.

Q. And you permitted your brother and his wife to stay in your home during that period?

A. That is right.

Q. Did you when you left your brother and sister-in-law in your home state to them or to either of them that you were going away and that you wanted them to stay in your apartment in case any important mail or telephone calls were to be received, insinuating that you or your husband expected mail or telephone calls of a secret nature?

[fol. 1981] Mr. Saypol: May the characterization be stricken?

The Court: Was there a characterization in the question?

Mr. A. Bloch: I will eliminate the last phrase.

The Court: I don't know whether that was in the portion you read back. Eliminate the insinuation.

Mr. A. Bloch: I eliminate from my question the last phrase.

The Court: The insinuation part.

Mr. A. Bloch: The insinuation.

Mr. Saypol: It was testified to as a fact, not as an insinuation, if the Court please.

A. Well, it was not a fact.

Mr. A. Bloch: Will the reporter read the first part of the question and leave out the insinuation part.

(Last question read as follows:

"Did you when you left your brother and sister-in-law in your home state to them or to either of them that you were going away and that you wanted them to stay in your apartment in case any important mail or telephone calls were to be received?")

The Witness: I didn't say anything like that.

[fol. 1982] Q. Did your husband, in your presence, say anything like that?

A. No, he did not.

Q. Now, what was the occasion of their staying in your home? Did they have an apartment of their own?

A. No, they didn't.

Q. He had just come back from the Army, had he not?

A. That's right.

Q. And as far as you knew, they had no place to live?
A. That's right.
Q. Who suggested that they stay in your home for ten days?
A. I did.
Q. You did?
A. Yes.
Q. You invited them to stay in your home?
A. That's right.
Q. Your sister-in-law testified that on a certain occasion in 1946, or at least she thought it was in 1946——

Mr. A. Bloch: That is page 1013.

Q. —your sister-in-law visited you at your home and that she noticed a piece of furniture and that that piece of furniture was a mahogany console table; and that she had a conversation with the Rosenbergs—that means you and your husband—concerning the table; that she said that she admired the table and she asked you "when she bought a new piece of furniture," and that "she said she had not bought it, she had gotten it as a gift"; that she said "it was [fol. 1983] a very nice gift to get from a friend," and that "Julius said it was from his friend and it was a special kind of table," and thereupon your husband, Julius, "turned the table on its side to show us why it was so special"; did any such thing ever occur?
A. No, it did not.
Q. She further testified that your husband, in your presence, turned the table on its side and that "there was a portion of the table that was hollowed out for a lamp to fit underneath it so that the table could be used for photograph purposes," and that your husband said that "when he used the table he darkened the room so that there would be no other light and he wouldn't be obvious to anyone looking in"; did you hear any such conversation, at any time, either in 1946 or 1947, or at any other period?
A. I never heard any such conversation.
Q. Did your husband ever use any table, console table or any other table, for photograph purposes?
A. No, he did not.
Q. Did your husband ever photograph on microfilm or any other substance anything pertaining to any informa-

tion or secret concerning the national defense, or anything else at all?

A. No, he did not.

Q. Your sister-in-law further testified in answer to a [fol. 1984] question, I think Mr. Kilsheimer put:

"Q. And did Julius Rosenberg tell you what he photographed using the table?"

And his answer was:

"Yes. He took pictures on microfilm of the typewritten notes."

Did any such thing ever take place?

A. No, it did not.

Q. Did your husband ever take pictures on microfilm of any typewritten notes?

A. No, he did not.

Q. Now, she further testified—and when I say "she," I refer to your sister-in-law——

Mr. A. Bloch: Page 1015.

Q. —that on a certain occasion David—that means your brother—"mentioned that he had been offered a job to return to Los Alamos as a civilian at a very nice salary, and Julius asked him if he had accepted" and that your brother said, "No," and that Julius said "that he was very displeased, that David should have continued to stay there because he would have access to valuable information." Did you ever hear any such conversation?

A. No, I never did.

Q. Were you ever informed by anyone, either your husband, your brother, or your sister-in-law, that any such conversation took place, until she testified to it on the [fol. 1985] stand here?

A. No, sir.

Mr. Saypol: Now, may I point something out, if the Court please? You just referred to page 1015 of the record, Mr. Bloch.

Mr. A. Bloch: Yes.

Mr. Saypol: I wish you would continue to tell——

Mr. A. Bloch: I am reading on page 1015.

Mr. Saypol: Now, I wish you would tell me in advance. Now, the reason I rise to interrupt is, if the Court will examine the testimony, the witness testifying at the time, Mrs. Greenglass, said that the only ones present were David and Julius Rosenberg and "myself," meaning Ruth Greenglass. Obviously this witness could have no knowledge of the conversations that transpired at the time.

Mr. A. Bloch: Excepting that I followed it up by asking whether anybody ever told her that such conversation was had.

The Court: All right.

Mr. A. Bloch: Now, turn to page 1016.

The Court: Are you taking up every conversation that supposedly she had with Julius?

Mr. A. Bloch: No, your Honor, I won't spend much more than a few minutes more to cover it.

The Court: I don't want you to get the impression I am [fol. 1986] rushing you, but I don't want you to overtry a case, Mr. Bloch.

Mr. A. Bloch: I hope I am not overdoing it. I don't think I am.

Q. Did Julius ever tell you at any time that he was having students educated in various institutions in this country, for the purpose of their becoming ultimately useful to the Russian Government?

A. He never told me any such thing.

Q. Did Julius or anybody else ever tell you that these students were being subsidized by the Russian Government and that money was coming from the Russians to pay the expense of educating those students?

A. I never heard any such thing.

Q. Did anybody ever tell you that Julius wanted David to go to school to get a complete college education and that that education was to be partly subsidized by Julius, with money received by him from the Russian Government; did you ever hear of that?

A. No, I never heard of any such thing.

Q. Did you ever hear from any source that Julius offered your brother and sister-in-law $75 or $100 a week to live on, so that they will be able to get information from various sources?

A. No, I never did.
Q. Concerning the national defense?
A. No, sir.
[fol. 1987] Q. Did you ever hear Julius say to anyone that he got money from the Russians?

Mr. A. Bloch: Page 1019.

A. No, I never heard any such thing.
Q. Now, do you recall a talk had between you and your husband in or about the month of February, 1945, a short time after your brother had left from his first furlough, concerning something that your sister-in-law had told them in her house, about Julius wanting or contemplating making some money by stealing or getting something from the Government depots?

Mr. Saypol: I object to the question as to form. All Mr. Bloch has to do is add "gasoline and tools", then he will be leading the witness completely and will have given her every detail of the conversation.
The Court: Have the question read back, please.

(Question read.)

The Court: Go ahead, I will permit the question.

A. Yes, I recall such a conversation.
Q. Now, will you give us, as far as you can recollect the substance of what your husband told you and what you told him at the time?
A. Well, he came home and he said that Ruth was kind of worried about some crazy notions that Dave had about [fol. 1988] making some money, about taking some things, and I said, "Well, what did you tell her? Did you make sure to tell her to warn him about it, not to do it?"
He said, "Yes," that he had.
So then I asked, "Well, did Ruthie say that she would do that, that she would warn him?"
And he said, "Well, she kind of nodded her head at me and I got the feeling that she agreed with me."
And I said, "Well, all right, then I guess there is nothing to worry about."

By the Court:

Q. Well, you were in communication, were you not, with your brother, when he was at Albuquerque? You were corresponding with him, I think you told us this morning.

A. Yes.

Q. Did you ever, in any one of those letters, tell him to be sure not to steal anything from the Army?

A. No, I didn't say anything like that in any letter.

By Mr. A. Bloch:

Q. Did you know at the time you communicated with your brother that his letters were censored?

A. No, I don't think I knew anything like that.

Q. I don't hear you.

A. I say no.

[fol. 1989] The Court: She said she doesn't think she knew.

Q. Now, do you recall any conversation had with your husband in or about the month of May of 1950?

A. Yes.

Q. A few days prior to the arrest of your brother, concerning any talk that your husband had with Dave?

A. Well, I couldn't say whether just how far along in May it was or just how much before my brother was arrested that such a conversation took place, but——

Q. Well, do you remember any conversation had on that subject at or about the time of your brother's arrest?

A. Yes, I do.

Q. Now, if you do recall that conversation, will you give us the substance of it?

A. Well, as I recall, I think my husband spoke to me twice.

[fol. 1990] Q. I can't hear you. I am awfully sorry.

A. I say, I recall my husband talking about Dave with me twice during that time.

Q. Well, what was the substance of those conversations?

A. Well, the first time he said that Davey had demanded $2000. from him and had seemed pretty upset, and that when my husband told him that he had no such amount of money, he couldn't raise any such money for him, he said, "Well, could you at least do me another favor? Could you

at least get me, find out if your doctor will give me a vaccination certificate?''

Then another time——

The Court: Did he add why he wanted that vaccination certificate?

The Witness: No, I don't recall my husband telling me anything of any reason for it.

Q. Yes?

A. Except that Dave said that he was in a jam, he was in some trouble.

Q. Were you worried about it?

A. Yes, I was.

By the Court:

Q. Well, forget whether you were worried about it; what did you do about it?

A. Well, I said to my husband, ''Well, doesn't he know the kind of financial situation we are in? Didn't you tell him you can't give him money like that?'' And then I remember saying something to the effect that ''If Ruthie [fol. 1991] doesn't stop nagging him for money, she is liable to give him another psychological heart attack like he had in the winter.''

By Mr. A. Bloch:

Q. Where was your sister-in-law at that time?

A. Well, it is hard for me to say, because she was in the hospital and then she was out and then she went back to have a baby, and sometime after that her burns began to fester and she returned to the hospital. I couldn't say whether she was home than or not.

Q. Now, do you recall another conversation you had with your husband concerning Dave, sometime later than this talk you have just now narrated?

A. Yes, I do.

Q. Give us the substance of that.

A. Well, this time my husband told me that Davey really must be in some very serious trouble, that he was extremely nervous and agitated and that he began to talk wildly, threatened that he would be sorry if he didn't—my husband

said that David threatened him, that he, my husband, would be sorry if that money wasn't forthcoming.

Q. What did you say or do about it?

A. Well, I told my husband that I thought I should call the house and find out if everything is all right, and my husband said, "Well, the only thing is, Dave may be working, he may not even be home and I have no way of knowing just how much of this Ruthie knows about," and she [fol. 1992] has really had her hands full between her burns and having given birth to a child, and perhaps it would be wiser if he took it upon himself to see him at the earliest opportunity he could.

Q. When you say "For him to take it upon himself," whom are you referring to?

A. My husband, so that I wouldn't have to make arrangements the next day for a sitter to run over to my brother's house.

Q. Now, coming down to some period, sometime after the arrest of your brother, your sister testified——

The Court: Sister-in-law.

Mr. A. Bloch: Sister-in-law.

Q. (Continuing) Your sis-er-in-law testified that "Ethel came"—"Ethel," referring to you—"came with pie for me and gifts for my son"—it means her son—and after we talked—in your mother's house—"for a few minutes, you asked her would she please go out and walk with her; then you walked around the block several times, and that she said—no—and that you said that your counsel advised you to see her personally and get assurances from her that David would not talk; that you said that it would only be a matter of a couple of years and in the long run "we all would be better off," and that Julius had been picked up by the FBI for questioning, and that Julius had said [fol. 1993] he was innocent and that he had been released; and that you had no doubt that he would probably be picked up again; and that your husband would continue to say that he was innocent, and that if David would also say that he was innocent and that Julius was innocent, it would strengthen everybody's position; everybody would have a better—— would stand a better chance, and that you said,

"Do you think it is a dirty shame for David to take the blame and sit for two?" I don't know what it means to "sit for two"; but did any such conversation take place between you and your sister-in-law?

A. Well, I had a conversation with my sister-in-law, but it wasn't like that at all.

Q. How many times in all did you talk to your sister-in-law after the arrest of your brother?

A. I think it was about twice.

Q. Well, do you remember when the first conversation was had with her, I mean, after June 16th, was it, that your brother was arrested?

Mr. A. Bloch: Mr. Saypol, when was that?

Mr. Saypol: June 15th.

A. Well, I came to my mother's house because my sister-in-law, Gladys, was due home from the hospital that day. My children hadn't seen her for some time. I decided that when I picked the child up at 3 o'clock from school that I [fol. 1994] would take both youngsters down with me to my mother's house, to see my sister-in-law, Gladys.

Well, while I was there, my sister-in-law, Ruth, came in, and at that time I asked her how she was feeling, and she said that she still had some difficulty in getting around because of the burns, and then I asked, "Well, how is Davey?" And she said, "All right," and then she said to my mother, "Ma, I have to pick up the baby; she is outside in the carriage near my mother's store. Goodby-," and left very abruptly.

Q. Well, did you again see her that same day?

A. No, not that day.

Q. When was the next occasion that you saw her?

A. Well, the next time was on a Saturday. I had come down in the hopes that I would be able to go and visit my brother. I had gone to my mother's house and found nobody there. I went over to her mother's house and her mother told me that she had already left with my mother to see——

Q. To visit Davey?

A. That's right; to visit Davey.

Q. Yes?

A. And she said that my aunt had been supposed to go

along, too. Well, on my way, I was going to go home, and on my way home I decided I would look in once more at [fol. 1995] my mother's house, and this time I found my aunt; she had not been permitted to go, for some reason, and so I stayed there and waited until my sister-in-law and my mother returned from visiting my brother; and when they came in I began to ply her with questions as to his health and how he was standing up under jail; and when I might get to see him; and my mother said, "Well, look, Ruthie is very tired and very hungry. Suppose we sit down and eat and talk later." So I did that. We sat down and had a bite to eat, and afterwards Ruth said that she was going to pick the child up, it was almost time for her bath, and when we got to her mother's house, to the store where everyone was, with the carriage, she said, "You know, it is such a nice day, I think I will stay down with her another ten minutes. Then I will take her upstairs for her bath." So we began to walk, she and I, with the carriage, around the block, and I said, "Look, Ruth, I would like to know something; Are you and Davey really mixed up in this horrible mess?"

First she hesitated. So I said to her, in order to encourage it, in order to encourage her, "You know how I feel towards Davey. You know how I always felt towards him and how I have always felt toward you, although I must say that you people haven't always reciprocated, [fol. 1996] especially in the last year. However, that is besides the point. I want you to know that even if you did do this, and Davey, my attitude towards you and my feelings toward you won't change. I will stand by and help in any way that I possibly can. But I am his sister and I do have a right to know."

At that she flared up and she said, "What are you asking such silly questions for? He is not guilty and of course I am not guilty and we have hired a lawyer and we are going to fight this case because we are not guilty. Did you think we were?

And I said, "Look, I really didn't know what to think any more. There have been reports in the newspapers about confessions and much as I believed, always believed

in Davey, I really began to wonder. I had to hear it from your own lips."

And she said, "Well, now you have heard it and it is the truth. Neither of us is guilty."

Then she said something about having to go to the doctor. We had returned to the house, to the store, and her mother said, "You know, it might be a better idea to go to the doctor now while you are downstairs instead of going back upstairs and having to come down later after you have worked with the children. You know you are still not well." So she agreed, and I walked her part of [fol. 1997] the way, because it was in the direction of my own house. I walked her as far as East Houston Street, before I went to take the bus on Essex Street to go home; and as we talked—as we walked, we talked, and I asked her, "How are you making out as to living expenses? Have you enough money?"

She said, "Well, I have been asking my relatives and I am trying to raise money. It is pretty hard," and she sort of looked at me; so I said, "Look, Ruthie, I don't know what I would give to be able to say that I have some money that I can give you. I wish I could do that, but I really can't at the moment. You know how it is. However, if I can think of anyone that might possibly lend me some money for you, you can be sure I will do whatever I can," and with that we reached East Houston Street and I put my arms around her and kissed her. She remained rigid in my arms, didn't return the kiss, said, "Goodby" coldly, turned on her heel and left.

[fol. 1998] Q. That was the last talk you had with her?

A. That is right.

Q. Did you at any time either on that occasion or any other occasion, either in words or in substance ask her to get an assurance from Dave that he was not going to talk, that he was going to claim he was going to be innocent, or that he was innocent, and that if he does that, everybody will be okay and satisfied?

A. No, I never said any such thing.

By The Court:

Q. Well, as far as Dave personally was concerned, disregarding for a moment what he had to say about you and your husband, as far as he personally was concerned, did you want him to make a confession of his guilt at that time or did you want him to deny his guilt?

A. I wanted him to tell the truth, whichever it was.

Q. Even if it implicated him, is that right?

A. That is right.

Q. Then what did you mean by standing by him?

A. Well, I wouldn't love any less.

Q. Is that what you meant by standing by him?

A. That is right.

Mr. A. Bloch: May I have that watch?

(Mr. Lane hands to Mr. A. Bloch.)

[fol. 1999] By Mr. A. Bloch:

Q. There has been some testimony here to the effect that your husband told your brother that he had received from the Russians a watch, a wrist watch for you. Did you ever hear of that before?

A. Not——

Q. Until testified to here?

A. Not until I heard it in the courtroom.

Q. Now, did you have a wristwatch?

A. Yes, I did.

Q. I am holding in my hand a wristwatch that has been marked 30-D for identification, and ask you whether that is your wristwatch?

A. That is my wristwatch, yes.

Q. Speak louder.

A. Yes, that is it.

Q. Is this the only wristwatch you ever had?

A. I had one my brother Sam gave me that I lost once when I was going swimming.

Q. How long ago was that?

A. Oh, I must have been eighteen or nineteen.

Q. Now, who gave you this wristwatch?

A. My husband gave me that wristwatch.

Q. When?

A. Well, it was my birthday, 1945; September 28, 1945.

Q. And at that time after you got this wristwatch from your husband, it was the only wristwatch you had?

[fol. 2000] A. That is right.

Q. Did anybody ever tell you or intimate to you that this wristwatch came from the Russians?

A. No.

Q. Or that the Rusians paid for it?

A. No.

Q. Now, do you recall a trip that you took with your husband from Plattekill, is it?

A. Plattekill.

Q. Where is that?

A. Plattekill, New York.

Q. Do you remember how you came down when you returned to New York from Plattekill?

A. Yes. The man who owned the place that we were staying at took us in his car to Newburgh and then we took a ferry across.

Q. And did you come down on the train?

A. Yes.

Q. Was it East or West Shore?

A. East Shore.

Q. Do you know what, if anything, happened on that trip?

A. Yes.

Q. What happened?

A. My husband's wristwatch was lost.

Q. When you came to New York, what did your husband do about that wristwatch?

A. Well, we were in the taxicab on the way home and I said, "You know, you really should have put in a claim." He had gone back and asked for it through the train when he discovered that it was gone and had been unable to find it. He left the taxicab. I sat there with the children, and he went back to the inside. We were right outside the [fol. 2001] terminal; and he put in a claim for the wristwatch.

Q. He reported it to the people there?

A. Yes.

Q. In the office?
A. That is right.

Mr. A. Bloch: Will your Honor pardon me for just a moment?

That is all as far as I am concerned.

Mr. E. H. Bloch: I have just one question.

Cross Examination.

By Mr. E. H. Bloch:

Q. Do you remember when I became your husband's counsel?
A. Yes, I do.
Q. When?

The Court: That is two questions already.
Mr. E. H. Bloch: I think there will be four. I am going to apologize to the Court.

A. Well, it was a day after my brother David was arrested—the night after, I should say.
Q. Did you subsequently come down to my office with your husband after he had interrogated by the FBI?
A. Yes. Some time later.
Q. And did you also come down to my office when you were subpoenaed to appear before the grand jury?
A. Yes, sir, I did.
Q. And that I become your lawyer also?
A. Yes.
Q. Did I ever advise you to go to see Ruthie Greenglass and tell Ruthie Greenglass to tell her husband to keep [fol. 2002] his mouth shut?

The Court: What has that got to do with it? There has been no accusation hurled at you.
Mr. E. H. Bloch: But Ruthie Greenglass testified that Ethel Rosenberg said her lawyer sent her down.
The Court: All right, go ahead.

A. No, you never told me to do any such thing.
Q. Well, what did I tell you to do with respect to the Greenglass family?

A. You told me to stay away from them.
Q. Did I tell you I believed that they were your enemies?
A. Yes, you told me that.

Mr. E. H. Bloch: That is all.

The Court: You may cross examine. Any questions, Mr. Kuntz?

Mr. Kuntz: No, sir.

Cross Examination.

By Mr. Saypol:

Q. When did your husband lose this watch?
A. I didn't hear you. When, did you say?
Q. Yes. I say in what year. When?
A. That was the end of August, 1948.
Q. He reported the loss to you?
A. No, he didn't.
Q. Your lawyer asked you about the place where it was reported and you said in the office. In which office did he report it?
A. I didn't say in the office. I don't recall saying any-[fol. 2003] thing about an office.
Q. Didn't you hear your lawer a few minutes ago say did you report it in the office and didn't you say yes? Didn't you answer that?

Mr. A. Bloch: If your Honor please, she didn't say so at all. She said her husband reported it and she remained in the taxicab.
The Court: Well, I don't remember what she said exactly.

By The Court:

Q. What is the fact? Who reported it?
A. My husband reported it.
Mr. Saypol: May we refer back to the record?
The Court: Just a moment.
Q. Where?
A. He went inside.
Q. Where? Give us the approximate address.
A. I don't remember the exact address.

Q. Where did you take the taxi from when you came in?
A. From the railroad terminal.
Q. Where was that terminal?
A. I really don't remember. I know it was the New York Central.
Q. You mean at Grand Central Terminal?
A. Yes, that must have been it.
Q. Was that where your husband went to report it?
A. Yes.
[fol. 2004] Q. At Grand Central Terminal?
A. I think—that is my best recollection.

By Mr. Saypol:

Q. Did he report it when he got off the train or did he report it at some other time?
A. Well, I told you he reported it after we had already gotten into the taxi, because he had looked through the train himself; he had asked the conductors; he had asked people, but then he finally had to leave.
Q. A little while ago in response to a question from the Judge you said that you told your sister-in-law that your brother David should tell the truth; is that right?
A. That is right.
Q. And you likewise are telling the truth?
A. I certainly am.
Q. And you have told the truth throughout?
A. That is right.
Q. Do you remember having been before the grand jury?
A. That is right.
Q. And were you sworn there?
A. Yes, I was.
Q. Were you warned there of your constitutional rights against incrimination?
A. That is right.
Q. Did you volunteer the information there that you had talked with Mr. Bloch and obtained advice from him before you came to testify?
[fol. 2005] A. I don't know if I was asked any such question.

Q. When questions were asked of you there, did you tell the truth there, too?
A. Yes, I did.
Q. As to everything that was asked of you?
A. That is right.

Mr. Saypol: Would you be good enough, Mr. Schaefer, to mark this for identification?

(Marked Government's Exhibit 31 for identification.)

Mr. Saypol: I would ask leave in respect to this exhibit to substitute a photostatic copy for the original.
The Court: Are you offering it?
Mr. Saypol: I will in a moment.
The Court: Well, when it is offered.
Q. I show you Government's Exhibit 31 for identification, Mrs. Rosenberg. Is that your signature?
A. That is right. It is.

Mr. Saypol: I offer it in evidence (handing to Mr. A. Bloch.)
Mr. A. Bloch: No objection.

Let me look at it again, Mr. Saypol.

(Handed.)

Mr. A. Bloch: That is objected to. My son has just called my attention to the fact that it covers the question of [fol. 2006] alleged Communism, and I therefore object to the introduction of this paper in evidence on the ground it is incompetent, irrelevant and immaterial.
The Court: Well, let me look at it and I will rule.
Mr. Saypol: I am handing the Court the original together with the photostat.
The Court: Well, Mr. Saypol, I am not prepared to sustain the objection on the grounds urged by counsel, but I don't see as yet the connection. I think you ought to establish the connection between the signature on this document and the petition itself.
Mr. Saypol: She has said it was her signature.
The Court: Yes, but what is its relevancy to the case? She may have signed a lot of papers.

Mr. Saypol: Very true. That is an adequate defense. I shall connect it in any event.

The Court: Oh, wait a minute. I didn't read the top part.

Mr. Saypol: Is it apparent to your Honor now?

The Court: Just a moment.

Mr. Saypol: Excuse me.

The Court: I will admit it. Objection overruled.

[fol. 2007] Mr. A. Bloch: I except, your Honor.

(Marked Government's Exhibit 31.)

Q. As a matter of fact you have admitted previously to having signed this paper, haven't you?

A. I would like the advice of my——

Mr. E. H. Bloch: If the Court please, just a second. If the Court please, I can't avail myself of any privilege for any witness, but with the Court's permission I would like to advise this witness if she so desires she may avail herself of her privilege against self-incrimination with respect to this document or any other matter relating to her alleged connection——

The Court: You mean further interrogation. The document has been admitted into evidence. She admitted it was her signature. The document was identified. I overruled your objection as to relevancy. Now, the document is in. Now you are talking about further questioning concerning the document.

Mr. E. H. Bloch: I am not only talking about further questioning, your Honor, but this went in, I think, may I use the word, prematurely, without giving the witness an opportunity to avail herself of her privilege.

Let us assume that she said "Yes, this is my signature," and then she asserts to the Court, "Well, I want to exercise [fol. 2008] my privilege," I wonder whether the Court would have received the document.

The Court: Oh, no, I don't agree with you. You see, what you are confusing is this, and you had better bear this in mind: there are two types of evidence; the type of evidence that comes in as direct evidence; and there is the type of evidence that comes in where the witness himself or herself makes an admission, and it is on that type of evidence only that this privilege has any relevancy.

On the direct evidence the Government has a right to prove its case if there is any relevancy to it, and I have already ruled that there is relevancy. Now, with respect to this particular document, all that the witness was asked was whether or not that was her signature, and the witness said that was her signature.

Now, as to whether the document then became relevant was a question of law for me to pass upon and you have objected to it on that ground and I overruled your objection. It was just as if, as I see it, direct proof had been offered, and there probably would have been, as you know, other ways for the Government to establish the signature of this witness.

Mr. E. H. Bloch: I think there is no question about that, your Honor, but the thing that worried me was not only [fol. 2009] in connection with Communist questions, but I am concerned whether or not I was remiss in my duty in not advising this witness, prior to the time that she was shown this document, whether or not to answer the question whether or not it was her signature, but it is in, and I just want to assert my thoughts with respect to any further questioning.

The Court: Go ahead.

By Mr. Saypol:

Q. Just to complete the record, reverting now to your appearance before the grand jury, Mrs. Rosenberg, when did you appear before the grand jury?

A. Well, it was——

The Court: Do you know, Mr. Saypol, if you could probably stand at the edge of that table there, we could all hear much better.

Mr. Saypol: I am trying to save space and time.

The Witness: Well, it was after my husband's arrest.

Q. He was arrested on July 17, 1950, wasn't he?

A. That is right.

Q. As a matter of fact, that was the same day as you had the conversation with Ruth Greenglass to which you have testified?

A. What date was that?

[fol. 2010] Q. July 17, 1950.

A. Not to my recollection.

Q. Now, your husband was arrested on July 17th, and when after that did you appear before the grand jury?

A. It might have been a week or it might have been two weeks after.

Q. As a matter of fact, didn't you first appear on August 7, 1950?

A. Well, I said I really can't remember the exact date.

Q. Do you remember on August 7, 1950 having appeared before the grand jury in this court house and been questioned? You were questioned by Mr. Lane?

A. Yes, I was questioned by Mr. Lane.

Q. Were you asked this question and did you give this answer after identifying yourself and after being sworn:

"Q. You have appeared here in response to a grand jury subpoena that was served upon you? A. Yes."

Do you remember that?

A. Yes.

Q. "Q. When was that served upon you? A. It was served last Monday.

"Q. Do I understand you have consulted an attorney since you have received that subpoena? A. That is right.

"Q. And he no doubt has advised you on your constitutional rights? A. That is right."

[fol. 2011] Then Mr. Lane went on to be sure that you understood what your rights were. He told you about your right to refuse to answer any questions if the answers might tend to incriminate you. Did that occur?

A. Yes.

Q. Were these questions asked and did you give these answers?

A. Yes.

Q. And did Mr. Lane advise you that way?

A. Yes, he advised me.

Q. Were you asked at that time whether you had ever signed a petition for the Community Party?

A. I was asked that.

Mr. E. H. Bloch: Pardon me. If the Court please, I object to this question upon the ground that there doesn't

appear to be any inconsistency. The witness has testified that this was her signature.

The Court: Well, I think he just wants to bolster his point that the privilege has been waived before.

Mr. E. H. Bloch: Oh, if that is the purpose——

The Court: Is that what you had in mind, Mr. Saypol?

Mr. Saypol: Pardon me?

The Court: That she was asked about it and the wit-
[fol. 2012] ness had answered the question before the grand jury.

Mr. Saypol: That is so.

The Court: That the privilege was waived at that time and therefore it would be waived on this particular occasion.

Q. You were present before the grand jury on more than one occasion, weren't you?

A. Twice.

Q. The second time was on August 11th?

A. It was a few days after the first time.

Q. Were you asked this question and did you give this answer: "Q. Did you ever sign a Communist Party nominating petition for elective office? A. I did sign a Communist Party petition."

A. I refuse to answer on the ground that this might tend to incriminate me.

Q. Were you asked that question and did you give that answer at that time?

The Court: He is asking you whether you were asked that question before the grand jury. What is the date of that?

Mr. Saypol: August 11, 1950.

The Court: And whether you gave that answer.

Mr. E. H. Bloch: If the Court please, I think this raises a very interesting question of law which the Supreme Court grappled with on this last Rogers case.

[fol. 2013] Mr. Saypol: We are not grappling here at all. I am having no trouble.

Mr. E. H. Bloch: Please, Mr. Saypol, I am addressing myself to the Court.

The Court: Go ahead. Address yourself to me.

Mr. E. H. Bloch: Let us assume that at some time this witness has admitted certain things, whether in a formal proceeding or an informal way——

The Court: Go ahead.

Mr. E. H. Bloch: And then the witness is called before a competent body where the witness is duly sworn and testimony is sought to be elicited. Then the witness is asked, "Well, didn't you say at such and such a place, and such and such a time this and that"—that incriminating testimony, and the witness then states, "I refuse to answer. I now avail myself of my privilege."

Now, I submit, your Honor, that that privilege is good and by admitting that perhaps on some other occasion the witness may have admitted this incriminating fact doesn't estop the witness subsequently from asserting it, and it seems to me we are getting into that kind of legal question on this last question that you asked the witness, Mr. Saypol, and that is the reason I rise to advise this [fol. 2014] witness that if she desires to avail herself of the privilege, she may. Then the Court of course may rule upon whether her assertion is justified.

The Court: Supposing he were to ask her, "Did you tell the truth before the grand jury"?

Mr. Saypol: That is exactly what I have in mind.

The Court: Would you say she can assert privilege and refuse to answer that?

Mr. E. H. Bloch: I would think yes, your Honor. We had the very same question with Julius Rosenberg——

The Court: Just a moment. Let us assume that it has nothing to do with this particular topic. Let us assume it deals with another topic completely.

Mr. E. H. Bloch: Not incriminating in character?

The Court: Well, I don't know. Let us assume that they are trying to ascertain whether the truth was told before the grand jury or in court. Would you say that a witness there would have the right to refuse to answer because it might ultimately lead to some other incrimination?

Mr. E. H. Bloch: Yes, I think so. You see, any time a witness is asked a question whereby a direct answer or by

implication a witness would be coerced into stating some-
[fol. 2015] thing that would incriminate the witness——

The Court: Well, I get your point.

By The Court:

Q. Let me ask you this: Did you tell the grand jury the truth and the entire truth when you testified?
A. Yes.

By Mr. Saypol:

Q. Did you tell the grand jury in response to the question, "Did you ever sign a Communist Party nominating petition for elective office? A. I did sign a Communist Party petition."
Was that the truth?
A. I refuse to answer on the ground of self-incrimination.
[fol. 2016] Mr. Saypol: May I proceed?

Mr. E. H. Bloch: If the Court please, here again I say that this document is in evidence. She has admitted here at this trial that this is her signature. All Mr. Saypol is asking her is whether she said the same thing before the grand jury.
The Court: All right.
Mr. E. H. Bloch: It is in evidence, here. Mr. Saypol can read that to the jury, and I don't quite see the relevancy of asking these questions about the grand jury. There isn't any inconsistency.
The Court: Go ahead.
Mr. Saypol: I desire to read the original petition, nominating petition for councilman.

(Mr. Saypol reads Exhibit 31 to the jury.)

Mr. Saypol: May I exhibit it to the jury?

The Court: Yes.

By Mr. Saypol:

Q. 111 South 3rd Street was the address your husband forgot to tell us about the first time he testified.

Mr. E. H. Bloch: I object—all right.
The Court: What is the question?

Q. I say 111 South 3rd Street is the address where you lived with your husband and about which he forgot to testify or tell us the first day of his testimony?
[fol. 2017] A. That is right.

Q. Whom did you live with there?
A. We lived with a couple by the name of Pogarsky.

Q. Also known as Page?
A. Yes.

Q. Were they members of the Communist Party?
A. I refuse to answer on the ground of self-incrimination.

Q. You told us before about some condition of your back——

By The Court:

Q. Well now Mrs. Rosenberg, do you feel it would incriminate you if you answered whether the Pages or Pogarskys were members of the Community Party?
A. Well, I am apprehensive of self-incrimination.
Q. You mean that it might hurt you in this case or you might be prosecuted in another case because you admit that you lived with these people? I must be sure that your request for privilege is well taken.
A. My request for privilege is well taken.
Q. No, I don't want you to answer that. I want you to answer my question. Do you feel that it might affect you in this case or do you feel that you might be prosecuted because of an answer that you might make in another case?
A. Whatever I might feel, I refuse to answer on the ground of self-incrimination.
[fol. 2018] Mr. E. H. Bloch: Well, if the Court please, may I say that this very same question has been the subject of a case that was decided in the Circuit Court of Appeals, Fifth District, *Estes* v. *Potter*, where I happened to represent the appellant. A witness was asked "Did you know that X was a member of the Communist Party?" And the Court held that if the witness admitted in the affirmative that he knew, it would necessarily imply that he had some

connection with the Communist Party. So the Court reversed the contempt conviction below. Now I think the Court's question is analogous. I can see what the Court is trying to elicit from the witness, whether she feels it would incriminate her in this case or in another case. If it is in this case her privilege falls; if it is in another case then she can assert her privilege. But I am just wondering whether the witness understood what you were talking about.

By The Court:

Q. Did you understand what the Court had in mind in asking these questions?

A. No, I am afraid I am not a legal expert.

Q. You know enough law to assert the privilege?

A. Yes.

Mr. Saypol: Well, I am conscious of the issue here and [fol. 2019] I shall stay with the main issue.

The Court: Very good.

By Mr. Saypol:

Q. You told us about your back before. Whom did you spend your vacation with in the summer of 1944?

The Court: I want to say to the jury in the absence of a direction by the Court, you can't draw any inferences from the refusal to answer by the witness.

Mr. Saypol: And I should think the Court would add to that the guilt or innocence on the main issue, that the jury should take into consideration ultimately when the question reaches it——

The Court: I will charge them properly.

Mr. Saypol: The causal relation.

The Court: You can't infer that the witness has admitted anything from the refusal to answer. That is all.

By Mr. Saypol:

Q. Now, will you answer my question?

A. Yes.

Q. Whom were you spending your vacation with in the summer of 1944?

A. I believe that was the summer I spent my vacation with——

Q. The Sidoroviches?

A. My sister-in-law.

Q. Weren't you with the Sidoroviches that summer?

[fol. 2020] A. No.

Q. Isn't that the summer you sprained or strained your back because you were lugging water from the well?

A. First of all I didn't sprain my back at any time. I had a spinal curvature from the time I was 13, and second of all I didn't spend the summer of 1944 with the Sidoroviches.

Q. Well, did you ever tell anybody that you strained or sprained your back lugging water from the well?

A. I don't recall saying any such thing.

Q. You said before in answer to some of your lawyer's questions that for a period you had some help?

A. Yes.

Q. In your home. I take it that was a maid. A part-time maid or full-time maid?

A. You really couldn't call her either a full-time or a part-time maid.

Q. Was there more than one?

A. There was more than one.

Q. Well, did you have a maid in 1944?

A. Part of that.

Q. What part?

A. Well, two or three months.

Q. When? The beginning of 1944 or the end?

A. The beginning.

Q. Did you have any maid at the end of 1944? I withdraw that for a moment.

[fol. 2021] What was the name of the maid you had in the beginning of 1944, do you remember?

A. Yes. Evelyn Cox.

Q. She worked in the beginning of 1944?

A. On and off because we were away for a short time.

Q. She worked for you—I am sorry, I thought you were finished.

A. No. We were away. We were out of the house for about two or three months. So she may have been with

me for one month and been away for another two or three months and then come back.

Q. You mean you were out of the house on vacation, don't you?

A. Yes.

Q. When you returned from your vacation in the fall of 1944 did she return or did you have some other maid?

A. She returned.

[fol. 2022] By Mr. Saypol:

Q. What did she do, come in days?

A. What do you say?

Q. What did she do, how did she perform her work? Did she come in days?

A. Well, she came in for a few hours a week, not days.

Q. What did she do, cleaning and dusting?

A. She did the heavy work; she did woodwork; she did ironing.

Q. Did she clean and polish the furniture?

A. That's right.

Q. Did she cook?

A. No.

Q. How long from September 1944 did she continue with you?

A. It wasn't too much longer after that, that I can recall. I really don't recall.

Q. What does that mean, what do you mean by "not too much longer"? Will you tell us, please? Was she with you for one month in 1945, for 12 months?

A. You said 1944; do you mean 1944 or 1945?

Q. Yes, did she work for you in 1945, too?

A. She may have.

Q. Don't you know?

A. I am really not sure. I am a little hazy on when she did and when she didn't. It was sporadic.

Q. When did she leave you or when did you retire her?

[fol. 2023] A. I think it was somewhere in '46.

Q. Did you part good friends?

A. Yes.

Q. Did you have any other help?

A. At what time?

Q. After—what was it, Miss Cox, Mrs. Cox?

A. Mrs. Cox.

Q. After Mrs. Cox left, did you have any other help?

A. Well, when my baby was born, the second child, I did have Mrs. Cox for a short time, helping me again.

Q. I show you Government's Exhibit 28 (showing to witness); would you be good enough to point out for me which of these tables resemble the console table that your husband, you say, bought at Macy's?

Mr. E. H. Bloch: Well, there is no such testimony, your Honor, that these are the tables. I believe Mr. Saypol introduced these to show a resemblance.

The Court: He just asked her which of the tables did it resemble.

Mr. E. H. Bloch: I am sorry, I didn't hear the word "resemble," that is why I got up.

A. Well, these are—these look a lot more fancy than what I had, but I would say that this or this (indicating) has some similarity.

Q. Pointing to the tables with the pencil numbers 1 and 2; is that right?

A. Yes, I would say there was some similarity there.

[fol. 2024] Q. In other words, a table with a back——

A. Up.

Q. —standing up?

A. That's right.

Q. Which wall in the living room did you keep that table?

A. Well, that table was kept in so many different places over the period of years that we had it, I couldn't say that it was kept on this side, it was kept on that side, because we switched around the furniture to suit our needs, as time went on.

Q. When did you return the furniture to the Steingarts?

A. My child must have been about a year or perhaps a year and half old.

Q. 1947?

A. No, it was before that.

Q. 1946?

A. Might have been 1944 or '45.

Q. Did you buy new furniture when you returned the furniture to the Steingarts?

A. We bought a console table.

Q. I say, after you returned the furniture to the Steingarts, the furniture they had loaned you, did you buy other furniture, whether new or secondhand, or did you borrow any furniture from anybody?

A. We bought some secondhand pieces from time to time.

Q. You didn't have too much furniture in the house in 1944 or '45 after you returned the Steingart's furniture, did you?

[fol. 2025] A. Well, we still had the desk; we still — a couch.

Q. Did you hear your husband testify here that the console table was kept against the northerly wall of the living room?

A. Well, I am very poor where it comes to directions. I simply couldn't say north, south, east or west.

Q. The side of the wall opposite the entrance to the kitchen and the bedroom and the bath?

A. Well, it was on the wall, at least the last time I saw it, it was on the well opposite the kitchen.

Q. As a matter of fact didn't your husband testify that the console table was kept right near the kitchen entrance?

A. Yes.

Q. Then you say the last time you saw it it was on the other wall?

A. I didn't say "on the other wall." I said, "The wall of the kitchen."

Q. Did you ever put that table in a closet?

A. I may have.

Q. Did you?

A. I really don't recall whether I did or not.

Q. Did you ever hide the table in the closet?

A. No, that I can answer. I never hid anything in the closet, table or anything else.

Q. I am talking now of the closet opposite the bathroom door?

A. Yes.

[fol. 2026] Q. Did you ever put that table in that closet and keep it there?

A. I said I may have.

Q. Well, did you or did you not?

A. I can't recall. Just a moment. There were so many changes that I made in the house, with putting things in closets and taking them out of closets, that it is perfectly true what I say, that I may or may not have put it there, and I cannot recall, because there were any number of things I put into closets and took them.

Q. The console table was practically as wide as the entrance to the closet, was it not?

A. I wouldn't know.

Q. Well, how wide was the console table?

A. Again, I just couldn't say.

Q. If you had put the console table in the closet, when would that have been?

A. I couldn't say when that might have been.

Q. Did you have any clothes in the closet?

A. Yes, I did.

Q. Was it easy to get the console table into the closet?

A. I can't recall that it was easy or hard.

Q. What was the best piece of furniture that you had in the house in 1944 and 1945?

A. Well, I would say the bookcase, the break-front; the bookcase that stood on the chest of drawers was the best [fol. 2027] piece of furniture.

Q. And what else, anything else like that?

A. I can't recall anything else of particular value.

Q. How about this nice new table?

A. Well, it was a nice new table, but it cost $21 and it was anything but a very good piece of furniture.

Q. Who were the people who visited you around that time, do you remember?

A. We had several friends; we had many friends.

Q. Did you ever tell any of them that that table was a present?

A. No, I never did.

Q. You are sure of that?

A. I am sure of that, yes.

Q. You told everybody that you bought it in Macy's for $21?

A. I wouldn't say that I told everybody. I don't know

whom I might have spoken to and whom I may not have, but I know I bought it at Macy's.

Q. But whoever you talked with, you said that that table——

Mr. Saypol: I withdraw that.

Q. Whoever you might have talked with about that table, you never told anybody that that table was a present from someone?

A. That's right.

Q. Did you see a lot of pictures here that were brought [fol. 2028] from your house?

A. Yes.

Q. Did your husband take those pictures or some of them?

A. Some of them.

Q. Did he ever do his own developing and printing at home?

A. He never did. He made one attempt in 1950 to develop some films and he did such a poor job of it that he decided that that kind of a hobby wasn't for him.

Q. Is that the first time he ever tried to develop some film?

A. That's right; first time.

Q. What did he use in connection with that try to develop some films?

A. What did you say?

Mr. Saypol: I withdraw that.

Q. What kind of material, what kind of equipment did he have and did he use in connection with his attempt to try to develop some films?

A. I don't think I could even describe it or name the stuff. It was just some developing, developer, whatever you call it.

Q. Did he have trays?

A. What did you say?

Q. Did he have trays, enamel trays, that he used for developing and printing photographs?

A. Not that I can recall.

Q. Did he have chemicals?

A. I think he had some kind of chemical.

Q. Did he have what is known as a daylight developing [fol. 2029] tank?

A. I never even heard of those words until you just said them.

Q. Don't you know that when he was arrested, the agents of the Federal Bureau of Investigation took away from your home some photographic equipment, including a developing tank and some trays?

Mr. A. Bloch: I will object to it upon the ground it is assuming something that has not been proven. It may not be proven, and it is in the record.

The Court: Overruled.

Mr. A. Bloch: Exception.

A. Well, as I told you, I know there was some kind of developer around, but I wouldn't know what you call these things.

Q. Did you ever go with your husband to have any passport photographs taken?

A. No.

Q. Did you ever go with your husband to have any passport photographs taken?

A. No.

Q. Did you ever go to a photographer's place at 99 Park Row in May or June of 1950 with your husband and with your two children to have passport photographs made?

A. No, I never went to have any passport photos made.

Q. Did you ever go to a commercial photographer at any time in the last two years to have any pictures made of you or your family or your husband or all of you?

A. Yes, we did.

Q. When?

A. From time to time.

[fol. 2030] The Court: When was the last?

Q. When in the last two years?

A. Well, it is hard to say exactly when in those two years.

Q. How often did you go to have photographs made with your family?

A. Well, we never went as a prearranged thing to go and have photos taken.

Q. When did you go on the spur or the inspiration of the moment?

A. I really can't say exactly when.

By the Court:

Q. Well now, you remember the month of May very well, don't you?

A. Yes.

Q. You remember the month of June 1950 very well?

A. Yes.

Q. You remember all the incidents that have occurred?

A. Yes.

Q. Did you have any pictures taken for any purpose whatsoever in May or June 1950?

A. We may have; we may have.

Q. Do you remember where?

A. No, all I remember was some commercial photographer.

By Mr. Saypol:

Q. Do you remember posing with your family before the camera of that commercial photographer?

A. Yes.

By the Court:

Q. How did you happen to go to that particular com-
[fol. 2031] mercial photographer?

A. Well, I didn't say I went to any particular commercial photographer.

Q. Well, you just remembered posing before a camera?

A. Yes.

Q. How did you happen to get before that camera?

A. Well, my older boy happens to be very much interested in machines of any kind.

By Mr. Saypol:

Q. Is that the eight year old boy?

A. That's right. He is very precocious.

Q. So you took him in to play with the photographer, is that the idea?

The Court: Just a moment.

Mr. E. H. Bloch: I submit that the witness——

Mr. Saypol: ——

The Court: Mr. Saypol, will you wait until I am through?

Mr. E. H. Bloch: I move that Mr. Saypol's remarks be stricken from the record.

The Court: They will be stricken.

By the Court:

Q. I asked you how did you happen to get to that particular photographer? Who recommended that particular photographer?

A. Nobody ever recommen-ed any particular commercial photographer to us.

[fol. 2032] Q. How did you happen to go to that particular one?

A. We, as I tried to explain, my older child was interested in machines, among other things. We, it was our wont to go for walks with them and to stop and look at anything of interest, anything that might be of interest to the children, and very often, as we take these walks, the older child particularly, would ask, "Oh, come, let's go in here and get our pictures taken." That is—I think kids generally do that kind of thing.

Q. How many times would you say he had done that?

A. Oh, several times. We happen to be what you would call "snapshot hounds" and that bunch of pictures that you saw there doesn't nearly represent all the snapshots and all the photos that we have had made of ourselves and the children all through our lives.

Q. Then you remember, you say, having had some photographs taken in May or in June?

A. It may have been that time. I am really not sure. There were so many frequent occasions when we dropped into these places.

Q. I am talking about the very last ones that you had taken?

A. Well, I can't say what I don't recall and I really don't recall specifically.

[fol. 2033] By Mr. Saypol:

Q. Well, we have it now at least that the photographer, the commercial photographer, was within walking distance of your home at 10 Monroe Street; is that right?

A. Well, there were times we took walks and took photographs elsewhere.

Q. We are now talking about the time that you last remember, within the two years, when you went with your family to a commercial photographer to have a picture taken or pictures?

A. But I didn't say that we took a walk this particular time to this particular place.

Q. Where was it?

A. I wouldn't know.

The Court: Is this a convenient place to recess for lunch, Mr. Saypol?

Mr. Saypol: All right.

The Court: We will recess until 2.20.

(Recess to 2.20 P.M.)

[fol. 2034] Afternoon Session

Ethel Rosenberg, resumed:

The Court: Before you begin, I want to make certain of the fact that you understood my ruling on Exhibit 31, Mr. Bloch. I have not admitted Government's Exhibit 31 because of any belief on my part that Mrs. Rosenberg had waived her privilege against self-incrimination by testifying as to this matter before the grand jury.

Mr. E. H. Bloch: I see.

The Court: That was not the basis for my admission. The admission of the exhibit was because when shown her signature here, she admitted it was her signature. That was the basis of the admission.

Mr. E. H. Bloch: I understand that.

Mr. Saypol: May I proceed, if the Court please?

The Court: Yes.

Cross-examination Continued.

By Mr. Saypol:

Q. Mrs. Rosenberg, before the noon recess we were talking about the photographs that you took. Do you remember any better now when and where those were taken?

A. Which were taken?

Q. The photographs we were talking about, within the last two years, of the family.

A. Well, they were taken any number of places, any number of times in those two years.

[fol. 2035] Q. Can you think of one place?

A. Yes, I remember one place on Clinton Street.

Q. Clinton and where?

A. That I couldn't say but it was on Clinton Street.

Q. What kind of pictures did you get?

A. Oh, those usual little snapshots.

Q. Did you give any of them to any members of the family, did you show any of them to any members of the family?

A. I may or may not have.

Q. I see. How much did you pay for them or how much did your husband pay for them?

A. Oh, very little. It was this inexpensive kind.

Q. Six cents?

A. It may have been that, I really couldn't say.

Q. $2?

A. I doubt it was $2.

Q. $9, $10?

A. No, nothing like that.

Q. You can't remember when you had pictures taken at any time that cost $10?

A. I saw a couple of pictures made of my children up at some studios.

Q. Where?

A. It's near Fifth Avenue, 39th Street, somewhere like that?

Q. When?

A. I think the older one was six years old——

Q. When did you have the pictures taken?

[fol. 2036] A. What?

Q. When did you have those pictures of your children taken in 39th Street?

A. I say, when the older one was six years old and the smaller one was two, I think.

The Court: That would make it about two years ago, is that right?

The Witness: It must be about it.

Q. What was the photographer's name?

A. Oh, I wouldn't know. That is a studio that employs a lot of different people.

Q. How much did you pay them?

A. I paid one dollar.

Q. Did you show an-body in the family those pictures?

A. Yes, I did.

Q. Who?

A. My mother, my aunt.

Q. Those weren't passport photographs, were they?

A. I never took any passport photographs.

Q. Now do you remember a time in 1945 when your husband told you something about a talk that he had had with your sister-in-law about Davey's stealing from the Army?

A. Yes.

Q. Did you ever tell anybody about that?

A. No, I never did.

Q. Did you ever tell your mother?

A. No.

[fol. 2037] Q. Did you ever tell your brothers?

A. No, I never did.

Q. Did you ever suggest that someone ought to write to Davey and tell him not to do such a thing?

A. Outside of my sister-in-law.

Q. Is that the first time that you ever heard that Davey wanted to steal for money?

A. That's right.

Q. Weren't you worried about that?

A. I was.

Q. But you told nobody about it at all in the family?

A. No, I didn't. I was quite certain that he and his wife could handle their own affairs.

Q. Now then, did you learn sometime in 1950 that the FBI was asking questions about Davey stealing uranium?

A. Yes, I did hear about that.

Q. When did you hear that?

A. Some time after the FBI had actually come to see my brother.

Q. What month would that be in?

A. I couldn't possibly tell you what month.

Q. When you heard that did you remember what your husband had told you before about Davey wanting to steal things from the Army?

A. Well, when I spoke of the incident to my husband, we were discussing the fact that the FBI had been to see my brother about lost uranium, we did kind of recall something about that other incident.

Q. Did you talk about it with your husband?

[fol. 2038] A. A little.

Q. What did you say and what did he say?

A. Well, we just speculated if that was what he really was stealing at that time.

Q. When you heard that the FBI was questioning or had questioned him about the theft of uranium, did you say anything to your husband or did he say anything to you concerning the fact that that might have to do with the atomic bomb?

A. No, not that I can recall.

Q. Did you know in 1950 that Davey had been working on the atomic bomb?

A. Yes, by 1950 I knew it.

Q. On the other hand, you don't recall any conversation with your husband about that?

A. No.

Q. When you heard that the FBI was investigating the theft of uranium and questioned Davey, did you tell anybody else in the family about it?

A. I didn't, no.

Q. Do you know whether your husband did?

A. I really couldn't say.

Q. Did it occur to you that perhaps you ought to talk to Davey about it?

A. Well, it might have occurred to me but I felt that whatever I might have to say on the subject, whatever it might be, would fall on deaf ears by that time.

Q. Why?

A. Because our relationship, my husband's and my

brother's and mine, and my sister-in-law, had been slowly [fol. 2039] deteriorating.

Q. You weren't on good terms with each other because of the trouble in the business, isn't that so?

A. That's right, that's right.

Q. And you or your husband owed Davey a thousand dollars for his stock?

A. I am afraid I am a little hazy when it comes to business, the business matters, the financial arrangements. I really know very little about them.

Q. Did you know how much your husband owed to Schein when Schein had the deal with him?

A. I had some idea of it.

Q. Now we come to the time when your husband told you about this demand of Davey's for $2,000 or a vaccination certificate; do you remember that?

A. Yes.

Q. Did your husband tell you that Davey had said something about wanting to go to Mexico?

A. I can't recall that he did say that.

Q. Did it ever occur to you that Davey wanted to run away?

A. Well, another time—I don't know if it was that time but there was another time, I think, that my husband mentioned something about the fact that Davey had dropped the word "Mexico."

Q. What did you do about it? Did you tell anybody?

A. No, I didn't.

[fol. 2039a] Q. Did you tell your mother?

A. No, I didn't.

Q. Did you tell your sister or your brother—brothers?

A. Brothers; no, I didn't say anything.

Q. In connection with your knowledge of the affairs of Pitt Machine Company, did you have the power to sign checks?

A. I had that power, oh, toward the very end of the business.

[fol. 2040] Q. Now, there came a second conversation which your husband told you about where Davey was really desperate, do you remember that?

A. Yes.

Q. Thinking of all those things that had gone in the past did you tell your mother about it?

A. No, I didn't.

Q. Did you tell anybody else in the family?

A. No, I didn't.

Q. All you said was Ruthie must be nagging him for money again?

A. Oh, I said more things than that.

Q. Well, at the time you said Ruthie was nagging him for money, Ruthie had been in the hospital and had a baby, hadn't she?

A. Possible.

Q. She had been in the hospital before because of some serious burns?

A. That is right.

Q. What was it that made you suggest that maybe Ruthie was nagging him for money? Did you think she wanted it for a hospital bill?

A. Whatever she may have wanted it for, it was common knowledge that Ruthie always nagged Davey about money.

Q. Well, what did she want the money for? Was that discussed?

A. It was not discussed.

Q. But in any event there came a time when you did decide you wanted to do something to help Davey?

A. There never was a case of my having to decide that [fol. 2041] I wanted to help Davey; I had always helped Davey in the past and I continued to feel the same way about anything involving Davey.

Q. Well, I am talking now about the conversation you had with Ruth Greenglass. Isn't that the first time you said something must be done to help Davey?

A. I said something must be done to help Davey numerous times.

Q. What did you do at that time to help Davey?

A. Unfortunately I wasn't able to help him.

Q. Well, did you suggest that perhaps Davey might need a lawyer?

A. Well, I had heard that Davey's brother-in-law had hired a lawyer for him.

Q. At that time Davey was under arrest, wasn't he?
A. Yes.
Q. At that time he was in jail?
A. Yes.
Q. And you said to Ruthie at that time, you plied her with questions as to her health?
A. I plied her with questions as to my brother——
Q. Excuse me, you plied her with questions as to his health, is that right?
A. Yes.
Q. And you also asked how was he standing up in jail?
A. That is right.
Q. You mean, was he talking about you and your husband? Is that what you meant when you asked that?
[fol. 2042] A. Of course not.
Q. Of course you were innocent?
A. Absolutely.
Q. So was your husband?
A. Right.
Q. At that time had you consulted a lawyer yourself?
A. I consulted a lawyer after, sometime subsequent to the time that my husband hired Mr. Bloch. That was the day, the evening of the day that he had been interrogated by the FBI.
Q. In other words, that was on June 16 when he was interrogated, you hired a lawyer, you talked to Mr. Bloch?
A. My husband talked to him that evening.
Q. Did your husband talk with you after he talked with Mr. Bloch?
A. Yes.
Q. Did you talk between each other as to the extent to which you might become involved in this theft of defense materials, defense secrets?
A. We talked about Davey's arrest.
Q. Did you talk at that time about the possibility that perhaps Davey was going to implicate you in this?
A. Well, we did recall that the FBI had mentioned, had spoken to my husband in terms of my brother having implicated us, but frankly we didn't believe them.
Q. A little while ago you said you did everything to help Davey, do you remember that?
A. Yes.

Q. Did you help him join the Communist Party?

[fol. 2043] Mr. E. H. Bloch: I object to the question as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except and I now advise the witness——

A. I refuse to answer.

Mr. E. H. Bloch:—that she can avail herself——

Mr. Saypol: She knows the answer.

Mr. E. H. Bloch: She is a better lawyer than I am no doubt.

By Mr. Saypol:

Q. Go ahead.

A. I am going to refuse to answer on the ground of self-incrimination.

Q. Now that your lawyer has interrupted do you so refuse?

A. That is right.

Mr. E. H. Bloch: I object to that.

Q. Now then, you say the day your husband was interrogated he talked to Mr. Bloch?

A. That is right.

Q. Is that right?

A. That is right.

Q. Did you talk to Mr. Bloch at or about the same time?

A. No.

Q. When did you talk to Mr. Bloch?

A. Oh, some days after that.

Q. When you were talking to Mr. Bloch was your husband there too?

A. At some time he was.

[fol. 2044] Q. Did Mr. Bloch question you at length?

A. Yes.

Q. How long did the questioning take?

A. Well, I didn't spend much time.

Q. Well, did you go over all of these incidents that you have testified to or that your husband has testified to?

A. I can't recall now as to what incidents we may or may

not have discussed at that particular time, but certainly since my arrest we have certainly been over a lot of things.

Q. Well, at the time that you appeared before the grand jury as a witness your husband had been arrested, had he not?

A. Yes.

Q. You had not yet been indicted?

A. That is right.

Q. At that time had you disclosed to Mr. Bloch everything that you knew about the matter of the theft of atomic material or defense secrets?

A. I didn't know anything about the theft of atomic secrets. So how could I discuss it?

Q. Whatever you knew you told Mr. Bloch?

A. Whatever I felt was necessary to discuss with him I discussed with him.

Q. Did you answer all his questions?

A. Certainly.

Q. Did you withhold anything from him?

A. No, I didn't.

[fol. 2045] Q. You were completely frank with him and you told him the truth?

A. That is right.

Q. Did he give you advice?

A. Yes, he did.

Q. Did you follow his advice?

A. In the main I would say I did.

Q. In what respects didn't you follow his advice?

A. He told me to stay away from Ruth Greenglass.

Q. And you didn't?

A. And I didn't.

Q. But you did follow his advice to tell the truth?

A. That's right.

Q. Now, you came before the grand jury on August 7th; do you remember that?

A. Yes, about that time.

Q. And everything you told the grand jury was the truth?

A. Right.

Q. Do you remember having been asked this question and giving this answer:

"Q. When did you consult with your attorney for the first time in connection with this matter?

"A. I refuse to answer on the ground that this may tend to incriminate me."

Do you remember having been asked that and having given that answer?

A. That's right.

Q. Was that the truth?

Mr. E. H. Bloch: Now, if the Court please, I move to strike out the answer—I move that the question be stricken [fol. 2046] out, upon the ground it is incompetent, irrelevant and immaterial. There is no demonstration that there is any prior inconsistent statement made before the grand jury.

The Court: When asked the question here, she gave a time.

Mr. E. H. Bloch: Yes.

The Court: When asked there, she asserted the privilege.

Mr. E. H. Bloch: Is that an inconsistency?

The Court: I am not going to answer your question, but——

Mr. E. H. Bloch: Well, my objection is based upon the fact that I contend it is not an inconsistency.

The Court: Do you also content that that would not be something for the jury to consider on the question of credibility?

Mr. E. H. Bloch: I think, your Honor, that if this witness properly asserted her privilege against self-incrimination, then the jury is to draw no inferences.

The Court: No, I am asking you another question. Supposing a question is asked today which the witness answers, the same question asked previously which the witness refused to answer on the ground that it may tend to incrimi- [fol. 2047] nate her; now, my query is, might not that be something which the jury would consider on the question of credibility?

Mr. E. H. Bloch: Just give me a chance to think for one second, because there is a line of cases and I don't want to make any assertions which are contrary to what I consider the law to be. I would say this in all frankness, that there is a dubiety in my mind as to whether or not the jury could draw any inference by reason of a witness' re-

fusal to answer questions in which there is an assertion of self incrimination, whether made at one time or another, or I will even be more comprehensive at any time. That is my idea of the law, and may I assure your Honor that I still have a little doubt in my mind as to whether or not I am asserting the law properly.

I think the cases are fuzzy about it, but it is my duty to object because I feel that this witness is entitled to the privilege and my legal advice.

The Court: Proceed.

Q. Do you remember having been asked this question and giving this answer:

"Q. That may incriminate, the fact that you talked with your lawyer?

A. That was my answer."

Do you remember that question and do you remember [fol. 2048] that answer?

A. Yes, I remember.

Q. Was that the truth?

Mr. E. H. Bloch: Same objection, your Honor.

The Court: Overruled.

A. Was what the truth? That I answered the question that way?

Q. That you answered that to disclose whether you had consulted with your lawyer about this matter would incriminate you?

A. All I can say, Mr. Saypol, at this time, is that I don't remember what reason I may or may not have had at that time for giving such an answer.

Q. Might it have been an untruthful reason?

A. No.

By the Court:

Q. The fact of the matter is that you have no objection today to giving the answer to that?

A. That's right.

Q. And what was your answer today as to when you consulted your lawyer?

A. Sometime after my husband had seen him, the day, the evening of the day he was interrogated by the FBI.

Q. And today you feel there is nothing incriminating about that answer?

A. No.

Q. But at that time, before the grand jury, you did?

A. I must have had some reason for feeling that way.

[fol. 2049] Q. Now, what was the reason?

A. I couldn't say at this time.

The Court: In your own interest, I think you ought to think about it and see if you can give us some reason.

The Witness: I really couldn't say.

By Mr. Saypol:

Q. At that time, when you were before the grand jury, had you discussed this case with your brother, David Greenglass?

A. No.

Q. Not at all?

A. Not at all.

Q. That is, from the time when you first heard that he was being investigated for the theft of atomic secrets, up to the time when he was arrested?

A. That's right.

Q. You never talked to him about it at all?

A. No, I did not. I didn't see him.

Q. Do you remember having been asked this question before the grand jury and giving this answer:

"Q. Did you discuss this case with your brother, David Greenglass?

A. I refuse to answer on the ground that this might tend to incriminate me."

Was that question asked and did you give that answer?

A. Yes.

Q. Was that answer true?

[fol. 2050] Mr. E. H. Bloch: Just a moment. I just want to reserve my objection to all of these questions with relation to her testimony.

The Court: No, no, I am going to ask you to take specific objection.

Mr. E. H. Bloch: All right, then I will make specific objection to this question upon the ground it is incompetent, irrelevant and immaterial and no proper cross examination,

especially in light of the answers that the witness has already given.

The Court: Overruled.

Mr. E. H. Bloch: I respectfully except.

The Witness: I would like to answer that question.

Q. Will you please tell me whether the answer, when you gave it to the grand jury as to whether or not you had spoken to your brother, David Greenglass, to the effect that the answer might tend to incriminate you, was true then or false?

A. It was true, because my brother David was under arrest.

Q. How would that incriminate you, if you are innocent?

Mr. E. H. Bloch: Just a moment.

A. I didn't have——

Mr. E. H. Bloch: Wait a second. I object to the form of [fol. 2051] the question.

The Court: Let her give her own reasons as to why she answered it that way.

Mr. Saypol: I am willing to have her explanation, if the Court please.

The Court: Yes.

A. It wouldn't necessarily incriminate me, but it might ——

Q. You mean——

A. —and as long as I had any idea that there might be some chance for me to be incriminated I had the right to use that privilege.

By the Court:

Q. At any rate, you don't feel that way about that question today, do you? You have answered when you talked to your brother, Dave, right here in this courtroom, haven't you?

A. But I didn't talk to my brother, David.

The Court: What was the question there, Mr. Saypol? What was the question, please?

Mr. Saypol: I am asking——

The Court: No, no, the question you read before the grand jury, I want to know that question.

Mr. Saypol: (Reading):

"Q. Did you discuss this case with your brother, David Greenglass?

A. I refuse to answer on the ground that this might tend [fol. 2052] to incriminate me."

By the Court:

Q. You have no objection to answering that question here in the courtroom?

A. I have already answered that question, that I did not discuss it.

Q. And you don't feel that giving that answer will in any way incriminate you here today; is that right? That is why you have answered it?

A. That's right.

By Mr. Saypol:

Q. As a matter of fact, a truthful answer at that time would have been that you hadn't talked to him, would it not?

A. Well, but self-incrimination——

Mr. E. H. Bloch: Wait——

A. (Continuing) Self-incrimination is not a truthful answer.

Mr. E. H. Bloch: Wait. I just want to record my objection.

The Court: I will sustain the objection to that particular question.

Q. As a matter of fact, at the——

The Court: Now, let me ask a question. If you had answered at that time that you had not spoken to David, for reasons best known to you, you felt that that would incriminate you?

The Witness: Well, if I used the privilege of self-incrimi- [fol. 2053] nation at that time, I must have felt that perhaps there might be something that might incriminate me in answering.

The Court: All right, proceed.

By Mr. Saypol:

Q. As a matter of fact, at that time you didn't know how much the FBI knew about you and so you weren't taking any chances; isn't that it?

Mr. E. H. Bloch: I object to the form of the question.

A. I was using——

Mr. E. H. Bloch: Wait a second.
The Court: Overruled.
Mr. E. H. Bloch: I respectfully except.
Mr. Saypol: May that question be answered yes or no?
The Court: Yes, first answer it yes or no, then you can explain.
The Witness: Will you please repeat the question?
Mr. Saypol: Mr. Reporter, will you please read the question?

(Question read.)

A. I didn't know what the FBI knew or didn't know.
Q. Of course you didn't so you weren't taking any [fol. 2054] chance in implicating yourself or your husband?

Mr. E. H. Bloch: Now, if the Court please——

A. I was using my right——

MOTION FOR MISTRIAL AND DENIAL THEREOF

Mr. E. H. Bloch: Wait a second. I object to this entire line of questions as incompetent irrelevant and immaterial and I now move for a mistrial upon the ground that Mr. Saypol is persisting in asking questions, the import of which can only prejudice this defendant in the eyes of the jury, and it has no probative value whatsoever.
The Court: Mr. Bloch, you know the purpose of cross-examination, I take it?
Mr. E. H. Bloch: I do.
The Court: You know the way questions ordinarily are framed in cross-examination?
Mr. E. H. Bloch: I do, sir.
The Court: They don't expect a witness to volunteer,

and the cross-examiner has to phrase his questions in such a way as he thinks, with propriety, he can elicit the information which he thinks should be elicited. I think it is proper cross-examination. Your motion for a mistrial is denied. Your objection is overruled.

Mr. E. H. Bloch: I respectfully except, your Honor.

[fol. 2055] Mr. Saypol: Perhaps we may have a blanket objection so that Mr. Bloch won't interrupt me and try to interrupt the trend of my examination?

The Court: No, I think, with respect to this particular examination as to the questions before the grand jury, I prefer to have the specific objection.

Mr. Saypol: May we have an answer to the question now?

The Witness: I am sorry, but I don't remember the question.

Mr. Saypol: Mr. Reporter, will you go back, please?

(Question read.)

A. I didn't know whether I was taking any chances or I wasn't taking any chances. I was answering the questions as I saw fit, and if I felt that anything might tend to incriminate me, I so said.

Q. Would you explain, please, how the fact of whether or not you had talked with David Greenglass regarding this matter applied to possible incrimination, if you had had nothing to do with his activities?

A. I said——

Mr. E. H. Bloch: Wait a second.

The Court: I have asked that question. I have asked that question, Mr. Saypol.

[fol. 2056] Mr. Saypol: May we have the answer again, if the Court please?

The Court: No, I think she has answered it. She said that she just thought anything which in her mind might lead in some direction, she had a right.

By Mr. Saypol:

Q. Do you remember having been asked, or was this question asked of you and did you give this answer:

"Q. Do you recall ever having discussed the work of your brother, David Greenglass, the work that he was doing at Los Alamos, New Mexico?

A. I decline to answer on the ground that this might tend to incriminate me."

Was that question asked and did you give that answer?

A. Yes.

Q. Would you care to state how that would incriminate you?

Mr. E. H. Bloch: Just a second. I object to this question upon the grounds that if this witness would ever answer that question, it would vitiate and nullify all the rights that every citizen is entitled under the Fifth Amendment.

The Court: I am going to sustain your objection.

Q. Was that answer true?

[fol. 2057] The Court: No, no, I am sustaining the objection.

Mr. Saypol: I just wanted——

The Court: Oh, you just want to ask whether the——

Mr. Saypol: Whether the answer that was given at the time was the truth.

The Court: All right.

A. Well, if you mean, did I answer in that way? Yes, I did. You have the record there.

Q. Was that a truthful answer?

The Court: She said everything that she told the grand jury was true.

Q. You say that to this question, too? Was that a truthful answer?

The Court: What question?

Mr. Saypol: The one I just asked, if the Court please.

The Witness: I don't understand this.

The Court: Are you asking a question anew?

Mr. Saypol: Yes, I have stated the question. You see, if your Honor please, we have had a categorical denial here on the part of this witness in the greatest detail, and I am prepared to circumscribe my examination only to the extent that there was inquiry as it covers the subject generally. [fol. 2058] Of course, there has been interspersed here without deviation to every question an objection on every imaginable, unsupported ground—that is my version of it.

The Court: Now, that is your version. I will now tell the jury that they will draw no inferences whatsoever from a lawyer objection. That is his prerogative. That is what he is supposed to do, if he thinks he should object.

Mr. Saypol: I think on the general pattern of the case I have a right to proceed in continuity without interruption, to show the contract between the witness's position before the grand jury and her position here, and the jury can best judge, on the panorama that I paint as I go along.

The Court: I permitted you to do that with respect to several questions already. Now, as to this broad question, I don't remember that she was asked that specific question here, and whether or not that question is inconsistent with something she was asked here. I can't determine just from that question.

Mr. Saypol: I will go on then with the next one.

Q. Do you remember having been asked this question and having given this answer:

"Q. Do you recall a furlough visit that your brother [fol. 2059] made to New York in the late fall or first part of January, 1944, 1945?

A. I decline to answer on the ground that this might tend to incriminate me."

Was that answer true when you gave it on August 7th?

Mr. E. H. Bloch: I assume, your Honor, I have got a standing objection to this entire line of inquiry?

The Court: All right, objection overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: May we have an answer?

The Court: Yes; may we have an answer?

The Witness: I don't understand the question.

The Court: All right. Now, let me put it to you this way, and maybe we can get along with this.

By the Court:

Q. You did answer that question here in court, didn't you? You did remember that furlough visit?

A. Yes.

Q. So that you had no objection here upon any grounds, whether it is incrimination or anything else, to answering that question?

A. That's right.

Q. However, before the grand jury you did assert your privilege, did you not?

A. Yes.

Q. He wants to know what the reason for it was at that time.

A. The only reason was that my brother was under ar- [fol. 2060] rest.

By Mr. Saypol:

Q. Is that the only——

By the Court:

Q. You mean, you didn't feel it would incriminate you?

A. Well, if I answered that I didn't want to answer the question on the grounds that it might incriminate me, I must have had a reason to think that it might incriminate me.

By Mr. Saypol:

Q. Well, that reason was based on the advice that your lawyer had given you, was it not?

A. My lawyer had advised me of my rights.

Q. Did your lawyer tell you that you had a right to refuse to answer any and all questions before the grand jury?

A. No.

Q. He advised you only on the basis of what you told him?

A. He advised me as to my rights, but he also advised me it was entirely up to me to decide, on the basis of what the question was, whether or not I thought any answer might incriminate me, and I so used that right.

Q. You weren't making those answers because of a concern that you had about incriminating your brother, were you?

A. I can't recall right now what my reasons were at [fol. 2061] that time for using that right.

Q. Well, the right, as you expressed it, was that it might incriminate you; you said, "It might incriminate me." Those were your words, were they not?

A. Yes.

Q. All right, then your concern solely was as to whether or not you might be incriminated; isn't that so?

Mr. E. H. Bloch: I would have no objection to the question, I mean in the form, I mean if the word "so" were out. The witness may have many reasons.

The Court: Go ahead.

A. I said before and I say again, if I used that right, then I must have had some reason or other. I cannot recall right now what that reason might or might not have been, depending on the different questions I was asked.

The Court: Has something transpired between the time you were questioned before the grand jury and the date of this trial, which makes you feel that your answers at this time, at the trial, to those particular questions are not incriminating, and if so, what is it?

The Witness: I am afraid I don't get that.

The Court: All right.

[fol. 2062] Q. You perhaps know what it means to incriminate oneself. Do you know what it meant?

A. Oh, I knew what it meant, yes.

The Court: All right, Mr. Saypol, let us get along with this.

Mr. Saypol: I withdraw what I just said.

Q. Do you remember this question and this answer:

"Q. Did you invite your brother David and his wife to your home for dinner? I mean during the period while he was on furlough in January 1945?

"A. I decline to answer on the ground that this might incriminate me."

Do you remember giving that testimony?

A. Yes, I remember.

Q. Was it true at the time you gave it? Yes or no.

A. It is not a question of it being true.

Mr. Saypol: I would like to ask now that I have a categorical answer.

The Court: Yes, will you answer that, please?

Q. Yes or no.

A. What is the question?

By the Court:

Q. Was it true when you said that, that you refused to answer because it would incriminate you?

A. I said it might tend to incriminate me.

Q. Was that true?

[fol. 2063] Mr. Saypol: Just a minute, before you answer that, let me read the question and answer again.

The Court: Oh, let her answer that, Mr. Saypol. Let her answer that. You are spending a lot of time on it.

Mr. E. H. Bloch: I just want to interpose an objection, your Honor.

The Court: Have you thought of another ground for an objection?

Mr. E. H. Bloch: I think, your Honor, that the method of trying to import an unlawful act to a person who has asserted the privilege against self-incrimination destroys the privilege and undermines and takes away the person's right under the Fifth Amendment, and I object to this entire line of inquiry because inferences may be drawn which are not warranted under the law or under the facts.

The Court: Mr. Bloch, that is not the problem here. Nobody is seeking to take away, and you know very well by the way this trial has been conducted that the privileges that have been asserted here, there have been no rulings directing the witness to answer.

Mr. E. H. Bloch: Correct. When I say taken away——

The Court: However, when a witness freely answers [fol. 2064] questions at a trial, the answers to which, the answers to the very same questions to which the witness had refused to answer previously upon a ground assigned by that witness, I ask you, is that not a question then for the jury to consider on the question of credibility? Nobody is seeking to destroy any privilege.

Mr. E. H. Bloch: May I just answer it in one sentence? I submit that I disagree with your Honor's conception of the law, but I would like to explain very clearly, when I said seeking, maybe my formulation was unhappy; what I meant was that the objective effect of it was to vitiate the rights.

The Court: But the witness herself has vitiated by giv-

ing answers to them at the trial, answers to these very questions.

Mr. E. H. Bloch: Well then, I submit, your Honor, that there is a failure to make, and I think I am putting my finger on the heart of this thing—there is a failure here to distinguish between the circumstance where a witness involuntarily appeared before a tribunal and is sworn to testify as in response to a subpoena, as in the case here of a grand jury proceeding, and a case where the witness willingly comes and takes the stand and testifies.

The Court: Where is the witness willingly——

Mr. E. H. Bloch: Here. This witness has voluntarily [fol. 2065] taken the stand here. There was no obligation on her part to take the stand, your Honor.

The Court: Proceed.

By Mr. Saypol:

Q. Will you now answer the question yes or no?

The Court: And I have given the witness every opportunity to explain, indeed I have sought an explanation if she could give it to me as to anything that occurred that caused this change.

Mr. E. H. Bloch: I have no quarrel with the Court, but——

The Court: Oh no, no, I know you have no quarrel with the Court; it wouldn't do you any good if you did.

Mr. E. H. Bloch: But I disagree with the Court on the question of law.

(Record read beginning with "Q. Do you remember this question and this answer: 'Did you ever invite your brother David and his wife to your home for dinner? I mean during the period while he was on furlough in January 1945' " and ending with the answer "It is not a question of it being true.")

Mr. Saypol: Now may the witness be directed to answer my question?

The Court: Yes.

The Witness: Well, my husband——

[fol. 2066] Q. Yes or no, if the Court please.

The Court: Please, can you answer yes or no?

The Witness: No.

The Court: All right. Answer it as you think you ought to.

The Witness: My brother had been arrested. My husband had been arrested.

Q. On August 6th?

A. My husband had been arrested on July 17 and I had been subpoenaed to come before the grand jury. It was not for me to state what I thought or didn't think the Government might or might not have in the way of accusation against me. I didn't have to state my reason, but I did feel that in answering certain questions I might be incriminating myself until I exercised my privilege.

Q. What you are saying is that you were under no compulsion to confess your guilt in respect to this conspiracy?

A. I had no guilt——

Mr. E. H. Bloch: Just a moment, please.

The Court: She has answered.

A. (Continuing) I had no guilt to confess.

Q. Were you asked this question and did you give this answer:

"Q. Do I understand you are going to decline to answer [fol. 2067] all questions that I ask you?

A. No, no, I won't decline to answer all questions. It depends on the questions."

Did you say that?

A. Yes, I did.

Q. When you said it depends on the questions, you meant it depends on whether or not the question and the answer that you gave would tend to incriminate you, is that right?

A. That is right.

Q. You testified here today in response to questions from your counsel that the first time you saw Harry Gold was in this courtroom, is that so?

A. That is right.

Q. Do you remember having been asked this question and giving this answer:

"Q. Have you ever met Harry Gold? A. I decline to answer on the ground that this might intimidate me, incriminate me, I mean."

Did you give that testimony at the time?

A. I gave that testimony.

Q. Was it true, knowing Harry Gold would incriminate you?

A. Well, I felt at the time that it might.

Q. Had you ever heard of Harry Gold at the time before——

Mr. E. H. Bloch: I object to the form of the last question. [fol. 2068] The Court: Ask whether she thought at that time knowing Harry Gold would tend to incriminate her.

Mr. E. H. Bloch: I don't think that is the way the question was phrased.

The Court: That is the way the question was phrased.

Mr. E. H. Bloch: All right, if Mr. Saypol will take the Court's form of it.

A. At that time I felt that knowing Harry Gold might incriminate me.

Q. Had you ever seen him before?

A. No, but I had seen pictures in the newspapers and I had read of his testimony in other trials.

Q. You testified that you had never seen him before and never had anything to do with him before, didn't you?

A. That is right.

By the Court:

Q. You read of his testimony in other trials in August? Did you say?

A. Well, I read of his arrest and I read that he was a self-confessed spy.

Q. You don't mean that you read of his testimony?

By Mr. Saypol:

A. No.

Q. Don't you know as a matter of fact that Mr. Harry Gold never testified in court before the month of November [fol. 2069] 1950?

A. Well, I know that now.

Q. Well, do you care to explain how a denial of that on your part at the time that question was asked, a denial of the fact that you knew Harry Gold could possibly incriminate you?

Mr. E. H. Bloch: Now, if the Court please——

A. I made no such denial.

Mr. E. H. Bloch: Wait, wait, please, if I get up.

The Witness: I am sorry.

Mr. E. H. Bloch: I object to this question upon the ground it is incompetent, irrelevant and immaterial, and I submit further——

The Court: All right. You need not give me any more reasons. I will sustain the objection because I think we have her explanation as to all of these questions, as to why she answered as she did. So, Mr. Saypol, you need not ask each particular question.

Q. Do you remember being asked this question and giving this answer:

"Q. You don't deny that you met Harry Gold?

"A. I gave my answer. I decline to answer on the ground that it might tend to incriminate me. That was my answer."

Do you remember that question and answer?

A. Yes, I do.

[fol. 2070] Q. The next question was:

"Q. That was your answer to the first question and the second question was, you don't deny that you met Harry Gold?

"A. I decline to answer on the ground that this might tend to incriminate me."

Is that the testimony you gave at the time?

A. Yes, I gave that testimony.

Q. Was that truthful?

A. When one uses the right of self incrimination one does not mean that the answer is yes and one does not mean that the answer is no. I made no denial. I made no assertion that I did know him. I simply refused to answer on the ground that that answer might incriminate me.

By the Court:

Q. But you did answer it here in court, isn't that true?

A. That is right.

Q. And your answer here was that you never met him until he took the witness stand?

A. That is correct.
Q. So that you didn't assert any privilege with respect to that here in this courtroom?
A. No.

By Mr. Saypol:

Q. Were you asked this question and did you give this answer:

"Q. Have you ever talked with your brother David about [fol. 2071] his activities at Los Alamos?
"A. I decline to answer on the ground that this might tend to incriminate me."
Was that testimony given by you?

A. Yes.
Q. Was it truthful?
A. I have already answered.
Q. The next question

Mr. Saypol: I am going to go on quickly now. I just want to make the record. I know what the answer is going to be.
Q. "Have you ever seen any sketches that he made while he was working at Los Alamos?
"A. I decline to answer on the ground that this might tend to incriminate me."
Was that testimony given at the time by you?
A. Yes.
Q. Truthful?
A. I explained the reason for my answering that way.
Q. Do you care to answer it yes or no?
A. It can't be answered yes or no.
Q. You mean he might have shown you sketches?
A. I didn't say that.
Q. Do you remember this question and this answer:

"Q. Were you present when he gave information to your husband, that is when David Greenglass gave information to your husband which he had obtained from Los Alamos?
[fol. 2072] "A. Will you repeat the question, please?
"(Question read by the reporter.)

"Q. Were you present when he gave information to your husband, that is when David Greenglass gave information to your husband which he had obtained from Los Alamos?

"A I decline to answer on the ground that this might tend to incriminate me."

Did you give that testimony at the time?

A. Yes, I gave that testimony.

Q. Was it truthful? Yes or no.

A. I have already answered. It can't be answered yes or no.

Q. Now, you came back before the grand jury on August 11th, didn't you?

A. Sometime after the first time.

Q. Did you talk to your lawyer between August 8th and August 11th?

A. I must have.

Q. Do you remember having been asked this question and giving this answer:

"Q. I believe you had counsel?

"A. Yes.

"Q. And you had been advised by your counsel as to your rights?

"A. Yes.

"Q. That counsel is Emanuel Bloch, is that correct?

"A. Yes."

Do you remember that testimony?

A. Yes.

Q. Do you remember having been asked this question [fol. 2073] and giving this answer:

"Q. Do you know whether your husband is or was in any way affiliated with the Soviet Union?

"A. I decline to answer on the ground that this might tend to incriminate me."

Did you give that testimony?

A. Yes.

Q. Would that testimony tend to incriminate you?

The Court: Well now, wait a minute.

By the Court:

Q. You did answer that here in court, didn't you? You said your husband was not in any way affiliated?
A. That is right.

By Mr. Saypol:

Q. Was the answer truthful at the time you gave it?
Mr. E. E. Bloch: Objected to, your Honor.
The Court: She has already answered.
Q. Were you asked this question and did you give this answer:

"Q. Did you ever discuss with Ruth Greenglass the work which her husband was doing at Los Alamos during the war?
"A. I decline to answer on the ground that this might tend to incriminate me."
Was that testimony given by you at the time?

A. You have the record. Of course it is the testimony. [fol. 2074]Q. Was it the truth?
A. I have already answered that.
Q. What is your answer now?
A. Would you please repeat the question?

(Last several questions and answers read.)

The Witness: Well, I remember now that when I visited my husband some time before I was myself arrested he told me that he had met my brother David at the West Street House of Detention, and in reply to some discussion about recreation periods, that is, as to when my brother wanted his recreation period on the roof and when my husband wanted his, because they intended to keep them separated—in reply to that my husband told me that David had acted very hostile toward him, and had said, "If he comes anywhere near me I will knock his head off," or words to that effect.
Q. Is that the first time he ever said that?
A. No. He had said that to my husband a number of times before, before either of them was arrested.
Q. You just remembered that now, is that right?
A. Oh, I have remembered it before, but in trying to

answer the question put to me I am remembering that perhaps that influenced me in answering the way I did in front of the grand jury.

[fol. 2075] Q. But you say you were not guilty of any of these charges and you never participated in this?

A. That is right.

Q. In these activities?

A. That is right.

Q. Did you tell your lawyer that at the time it occurred? Did you tell that to Mr. Bloch?

A. About what?

Q. What you just said about David being hostile, as you put it, threatening to knock his block off? Is that what he said?

A. Yes.

Q. He didn't mean Mr. Bloch, did he?

Mr. E. H. Bloch: Maybe he did.

A. Is that a question?

The Court: Let us get along. Don't answer that.

Q. Do you remember having been asked this question and giving this answer:

"Q. Were you ever present at a discussion with Ruth Greenglass during which the topic was the work which her husband, David Greenglass, was doing at Los Alamos during the war?

"A. I decline to answer on the ground that this might tend to incriminate me."

Did you give that answer? Was that question asked and did you give that answer?

A. Yes.

[fol. 2076] Q. Was it the truth?

A. Well, I just explained to you what may have influenced me.

The Court: All right.

The Witness: To assert my right of self-incrimination.

Q. Do you remember having been asked this question and giving this answer——

The Court: I don't think this serves any purpose, Mr. Saypol.

Mr. Saypol: I have just a few more which run down the pattern of denials on the stand. Two or three more minutes.

The Court: All right.

Q. "Q. Did you ever hear your husband, Julius, discuss with Ruth Greenglass the work which her husband, David Greenglass, was doing at Los Alamos during the war?

"A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. Yes.

Q. Was it truthful?

The Court: Same answer?

The Witness: Same answer.

Q. "Q. Did you ever discuss with David Greenglass the work which he was doing at Los Alamos during the war?

[fol. 2077] "A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. Yes.

Q. Was it truthful?

A. The same answer.

Q. Do you remember having been asked this question:

"Q. Did you ever hear David Greenglass discuss his work in connection with the atom bomb and nuclear fission?

"A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. You are reading it. Of course it is the testimony.

Q. Was it truthful?

A. The same answer.

Q. Is it possible that you might have discussed that with David Greenglass?

By the Court:

Q. Well, your testimony here was you did not?

A. That is right.

Q. And you did not assert any privilege as to that particular question when put to you here in court?
A. No.

By Mr. Saypol:

Q. In spite of the fact that you have denied these things here in court, does this testimony perhaps refresh your recollection that perhaps you did talk with Greenglass in [fol. 2078] 1944 and 1945 about the atom bomb and nuclear fission and things like that?
A. It couldn't possibly refresh my recollection because none of these things took place.
Q. You denied here that you knew Anatoli Yakovlev, is that right?
A. Yes.
Q. Were you asked that question before the grand jury?
A. I don't recall.
Q. "Q. Do you know Anatoli Yakovlev?
"A. I decline to answer on the ground that this might tend to incriminate me."

Were you asked that question and did you give that answer?

A. Now that you read it, I suppose they did ask me that, and I did answer that.
Q. And yet you had never met Yakovlev in your life?
A. That is right.
Q. Would you care to explain how you might be incriminated on the basis of that question and answer?
A. It is not necessary to explain the use of self-incrimination.
Q. Do you recall having been asked this question and giving this answer:

"Q. Would you care to attempt to identify his picture?
"A. I would not care to attempt."
Is that your testimony?

A. Yes.
[fol. 2079] Q. Why didn't you want to care to attempt to identify Yakovlev if you never saw him before or had never seen him before?

Mr. E. H. Bloch: I object to the question on the ground that if the witness purported to answer this question it would vitiate her privilege.

The Court: Well, you refuse to answer because of your privilege?

The Witness: Yes.

The Court: I want the jury to understand that I am permitting this question, as I said before in answer to counsel's objection, on the question of the credibility of the witness. The witness has answered the question here in court and on previous occasion had asserted privilege. As I said before, there is no interest to be drawn from the assertion of privilege against self-incrimination, but it is something the jury may weight and consider on the question of the truthfulness of the witness and on credibility, and in the charge proper, my main charge, I will have more to say about how you judge the credibility of witnesses.

Mr. Saypol: I shall ask a group now in order to save time.

By Mr. Saypol:

Q. Do you remember being asked these questions and to each of them giving the same answer, refusing to answer on the ground that the answer might tend to incriminate [fol. 2080] you:

"Q. Do you know whether your husband knows this Yakovlev?"

The Court: I think we have had enough on this subject, Mr. Saypol, and for this particular purpose, and the purpose for which it is limited, I don't see anything would be added by constant questioning and more assertion of the privilege. So I am going to ask you to go on to another topic.

Mr. Saypol: May I ask an omnibus question?

Q. Is it not a fact, Mrs. Greenglass, that before the grand jury——

A. Mrs. Rosenberg.

Q. Excuse me, I am sorry. You are the defendant here. Is it not a fact that after consultation with your lawyer, in the course of your two appearances before the grand jury you refused to answer any questions asserting your

privilege against self-incrimination insofar as you were asked questions relating to the employment, the activities of your brother David at Los Alamos in 1944 and 1945, insofar as concerned his wife, insofar as concerned Harry Gold and insofar as concerned Yakovlev, and insofar as concerned your association and your husband's association in connection with these people whom I have mentioned relating to the theft from Los Alamos of material relating to the development and production of the atomic bomb and [fol. 2081] the objective of delivery to the Soviet Union?

Mr. E. H. Bloch: Of course, the same objection goes to this question, your Honor, with the additional one, that all of these questions have already been asked and already been answered, and this is merely a composite——

The Court: Well, I cut him off from asking any more questions. So I will permit this general question.

A. It is a fact that I exercised my privilege against self-incrimination wherever I felt the need to do so.

[fol. 2082] By the Court:

Q. But you did not exercise that privilege here in court with respect to that same subject matter?

A. No.

By Mr. Saypol:

Q. That need you felt was necessary for assertion by you so that you would not incriminate yourself, is that right?

A. I said that I used the right against self-incrimination.

Q. Is it not a fact that at the conclusion of the grand jury proceeding at which you were present as a witness this was said to you:

"Q. Is there anything else you want to tell us about this entire matter?

"A. No.

"Q. Any statement you want to make to the jury?

"A. No."

Did that occur?

A. Yes.

Q. Did you make any statement?

A. No.

Q. Did you make any answer?

A. No.

Q. You knew by that time that your husband was under arrest in connection with this crime?

A. Yes, he was under arrest.

Q. You knew at that time, too, that you were suspect, did you not?

A. I really didn't know if I knew it.

Q. Didn't you think it appropriate at that time to make [fol. 2083] make a complete statement such as you have made here denying any possible connection or complicity in this matter?

A. I had gone to the grand jury to answer any question they might put to me and that I did. It didn't occur to me that it was something I was supposed to do, to make any kind of statement.

Q. Without exception you have refused to answer these questions because of the privilege which you had been advised you enjoyed?

A. Not without exception.

Q. You mean you told the name of your lawyer——

The Court: All right, we have that.

Mr. Saypol: Let me ask this: —

Q. Without going into detailed questions in that regard, is it not a fact that with respect to every question that was asked of you at that grand jury relating to membership or activity or participation by your or your husband, the defendant, David Greenglass, the defendant, or Ruth Greenglass in the Communist Party, you similarly asserted your privilege against incrimination, is that so?

A. I asserted my privilege against self-incrimination.

Q. In respect to those matters concerning membership or activity or participation in the Communist Party by those I have mentioned?

The Court: You don't assert any objection to this? You [fol. 2084] have no objection to this particular question (addressing Mr. Bloch).

A. I don't recall that there were any such questions asked me concerning my brother or his wife.

The Court: Well, now, I don't want these questions read, Mr. Saypol.

Mr. Saypol: Well, I might take as long as I have taken to this point. So I will omit them. I think the record is adequate. I think I have had enough questions.

Mr. E. H. Bloch: With my father's permission, may I take this witness on the redirect?

The Court: Instead of your father?

Redirect examination.

By Mr. E. H. Bloch:

Q. Did you come to the grand jury down here in the Federal Building in the early part of August? I believe the 7th and 11th, voluntarily, or were you subpoenaed?

A. I was subpoenaed.

Q. At the time you exercised this privilege against self-incrimination in response to certain questions did you believe that you were guilty of any crime of espionage?

A. I certainly did not.

Q. Were you at any time— —

The Court: And you don't believe today——

Q. And you don't believe today that you are guilty of any [fol. 2085] crime?

A. I don't believe any such thing.

The Court: So there was no difference in your position then than there is today?

Mr. E. H. Bloch: I am coming to that, your Honor.

The Court: Is that right?

The Witness: Well, I didn't believe I was guilty then. I don't believe it today. As a matter of fact, I know I wasn't guilty then, and I know I am not guilty now.

The Court: The point is. you answered these questions at the trial and refused to on the ground that it would tend to incriminate you before the grand jury.

The Witness: As I said before, I can't remember now what reasons I might or might not have had to use the ground of self-incrimination then.

The Court: All right.

By Mr. E. H. Bloch:

Q. Had you heard from your husband or from anybody at the time you went down to the grand jury here in August,

1950, that your brother David had accused your husband of conspiracy with him to engage in espionage?

A. My husband told me the day he was interrogated by the FBI that they had said that my brother had tried to implicate him.

Q. And were you aware at the time you went down to the grand jury that your brother was trying to implicate [fol. 2086] you?

A. (No answer).

Mr. Saypol: While the witness is thinking, just a minute, perhaps we will object to the question as to form on the use of the word "implicate."

The Court: I will overrule it. What was the answer?

A. I may very well have been so aware.

The Court: And you were aware of it here at the trial, too?

The Witness: Well, I couldn't help be aware of that.

The Court: Very well.

Q. Did you have any fear at the time you went down to the grand jury in August on these two occasions in 1950 that your brother was trying to involve you in the crime of espionage?

A. Would you please repeat that?

The Court: He wants to know whether you had any fear that he was trying to implicate you when you went before the grand jury.

The Witness: I must have had that fear.

Q. When you testified before the grand jury here in August, 1950, whether it be on the first occasion or whether it be on the second occasion, were you ever brought down before any Judge of the Federal Court in this building, and did the prosecuting attorney or the attorney who was presenting the evidence to the grand jury or any member of Mr. Saypol's staff, ever attempt to compel you to answer [fol. 2087] any of these questions?

A. No.

Mr. E. H. Bloch: That is all.

Recross-examination.

By Mr. Saypol:

Q. If you had the fear that you told Mr. Bloch about, why didn't you at that time tell the same story to the grand jury that you have told here to this jury rather than take refuge in your constitutional privilege?

A. Whatever reasons I may have had, I had them, and therefore I felt I had to take refuge.

Q. You profess a love for your brother, don't you?

A. You mean I once had a love for my brother.

Q. You mean that that has changed?

A. I would be pretty unnatural if it hadn't changed.

Q. Did you have the love to which you have testified on August 7th and August 11th when you appeared before the grand jury?

A. I certainly did.

Q. Did you have an apprehension then of what your brother was facing as a result of his arrest and the prosecution on the charges?

A. I understood what he might face.

Q. It was serious, was it not?

A. Yes.

Q. And by that time you were aware of the fact, as you said, that he was trying to implicate you and your husband, is that so?

A. Yes.

Q. Can you give me any better reason than being aware [fol. 2088] of these things, as you have just said, why you didn't disclose to the grand jury those things to which you have testified here on your direct examination?

A. At that time I didn't know what to believe or not to believe about my brother.

Q. But you knew what your position was and you had reason to know what your husband's position was in relation to this thing?

A. Yes, but my brother was under arrest.

Q. Nevertheless, you took refuge in your constitutional plea?

A. Yes, I did.

Mr. Saypol: That is all.

Redirect examination.

By Mr. E. H. Bloch:

Q. Were you under indictment at the time when you testified before the grand jury?
A. No.
Q. You are a defendant now, aren't you?
A. Yes.
Q. And have you insisted on going on this stand here and testifying about it?
A. I certainly have.
Q. To protect yourself and to defend yourself against the accusations against you?
A. Absolutely.

Recross examination.

By Mr. Saypol:

Q. You didn't think there was any other reason——
The Court: Gentlemen, when is this going to stop?

Mr. Saypol: Well, I should think this question of taking [fol. 2089] the stand is something that should not be discussed, but having been asked, I desire to ask a question.
The Court: Go ahead.

Q. You have taken the stand on the advice of your lawyer, Mr. Bloch, have you not?
A. Yes.
Q. Did you likewise testify before the grand jury that the answers to these questions might incriminate you on the advice of the same Mr. Bloch?
A. I am afraid—please repeat it? I really don't know.

(Last question read.)

The Witness: Mr. Bloch did not advise me to answer any question any way, one way or another. He simply advised me of my rights, and that it was up to me to so exercise them if I saw fit.
Q. Didn't you testify a few minutes ago that you talked to Mr. Bloch the first time you went to the grand jury on August 7th?

A. That is right.

Q. And didn't you testify also that you talked to Mr. Bloch between August 7th and August 11th on the next occasion of your appearance before the grand jury?

A. Yes, I did.

Q. Didn't you testify that you had counsel?

A. Yes.

Q. Didn't you answer my questions to the effect that you had told Mr. Bloch what had transpired before the grand [fol. 2090] jury and he had advised you?

A. He had advised me of my rights, but you asked me if he had advised me to answer certain questions a certain way and that he did not.

Q. Did you tell him what they were asking you?

A. Yes, I did.

Q. You didn't tell him they were asking you about anything concerning David Greenglass and the atom bomb theft, did you?

A. I can't recall exactly everything I might or might not have told him about.

Q. Were there any other questions you were afraid of or apprehensive of when you talked to Mr. Bloch? Did you tell him about any other crime?

A. No crime that I could have committed because I didn't commit any.

Mr. Saypol: That is all.

Mr. E. H. Bloch: That is all.

(Witness excused.)

Mr. E. H. Bloch: Defendants Julius Rosenberg and Ethel Rosenberg rest.

Mr. Kuntz: I would just like to know whether these various indictments in this case are considered in evidence, or must they be put in evidence.

Mr. Saypol: They are not even before the Court, if the Court please.

The Court: That is right.

Mr. Saypol: They would normally be deemed received [fol. 2091] without being marked.

The Court: It is a question of relevancy. There are thousands of indictments that are on file in the Court, but they have no relevancy in the case.

Mr. Kuntz: The indictments in this case; no other case.

Mr. Saypol: Does Mr. Kuntz perhaps refer to the indictments against Harry Gold or against Brothman and Moskowitz?

Mr. Kuntz: Mr. Saypol knows that I am asking for the three indictments in this case.

Mr. Saypol: And I know Mr. Kuntz shouldn't refer to these——

The Court: Just a moment. Mr. Kuntz, make your offer and then let us have a ruling on it. Just make your offer.

Mr. Kuntz: I wanted to know, if the Court please, whether these indictments, the first indictment in this case, is——

The Court: They are all filed records. Now you are making a request that they be something to be submitted to the jury?

Mr. Kuntz: Yes.

The Court: Or something to which you can refer?

Mr. Kuntz: Yes, that is correct.

[fol. 2092] The Court: That is another point.

Mr. Kuntz: That is the only thing I am asking.

The Court: Mr. Saypol?

Mr. Saypol: I object to it on the ground that it is wholly irrelevant.

The Court: What is the relevance?

Mr. Kuntz: I think the indictment in this case is relevant and should be before the jury, and the jury should know what it says. As a matter of fact, I believe your Honor yourself read, or Mr. Saypol read, from the indictments.

The Court: They are the indictments on trial. They will have them.

Mr. Kuntz: That is what I am talking about, the indictments on trial.

The Court: But you are offering two other indictments, you said.

Mr. Kuntz: In this case.

The Court: There is only one indictment in which the defendants are being tried.

Mr. Kuntz: All right.

The Court: The superseding indictment. That will be before the jury.

Mr. Kuntz: Then, without the notations that the clerk told me about on the back, I offer in evidence before this jury

the first indictment in this case against Julius Rosenberg [fol. 2093] and Ethel Rosenberg, I offer that in evidence—wait a minute, I am sorry And Anatoli Yakovlev, I believe.

Mr. Saypol: If the Court please, all Mr. Kuntz has to do is to refer to a piece of paper in the file there without making this extended speech, and my answer would be that I object on the ground that it is wholly irrelevant, that I am not trying a case other than the one reflected in the indictment.

The Court: As a matter of fact, I told the jury in their selection that they are to draw no inferences whatsoever from any indictment, that it was merely a way of bringing somebody before the Court, and the fact that there may have been other indictments filed or there weren't any indictments filed, had no relevance to the case. That is all.

[fol. 2094] Mr. Kuntz: I believe your Honor cautioned them against that in behalf of the defendants, that they should not draw any inference.

The Court: That is correct.

Mr. Kuntz: Now, here is a defendant asking that it be put in evidence.

Mr. Saypol: I object to this.

Mr. Kuntz: And may I refer to the number?

Mr. Saypol: I object to this discourse, because I am not trying to prove anything except the case.

The Court: Let me see the indictment.

Mr. Kuntz: May I identify it?

The Court: I don't see any particular relevance to it. There has nothing been pointed out to me as to any relevance other than the fact that you want it before the jury, and if that is your only reason, I will sustain Mr. Saypol's objection.

Mr. Kuntz: May we have it marked for identification or deemed marked for identification?

The Court: That is right.

Mr. Kuntz: That is, just the body of it, not the notation.

The Court: Identify it by number.

Mr. Kuntz: C——

The Court: C what?

[fol. 2095] Mr. Kuntz: The body of the indictment is C.133-141.

(Marked Defendants' Exhibit J-1, being indictment C, 133-141 for identification—deemed marked.)

Mr. Kuntz: Now, I offer for identification, likewise, the body of the indictment numbered C. 133-293, and I presume that your Honor will rule the same on that?

(Deemed marked Defendants' Exhibit J-2, for Identification.)

Mr. Kuntz: May we have an exception on both?

The Court: Sure.

Mr. Kuntz: Then I take it that the last superseding indictment is deemed in evidence; is that right?

The Court: It is not deemed in evidence, but it is a matter from which I have quoted and read——

Mr. Saypol: That can go to the jury.

The Court: It is a record that can go to the jury.

Mr. Kuntz: May I show this, the last indictment?

The Court: Not right now, no.

Mr. Kuntz: No, no, at the time I sum up.

The Court: I will send it in to them.

Mr. Kuntz: Fine; that is all I want to know.

The Court: I will send it in to them.

Mr. Kuntz: That is all I want to know. I don't care whether it is marked or not.

The Court: They have got to know what offense is before [fol. 2096] them.

Mr. Kuntz: As long as they are going to have it, that is all I want.

The Court: You can rest assured, they are going to have it and they are going to have a full explanation from me as it affects your client as well as the other defendants.

Mr. Kuntz: Thank you very much, sir.

Mr. Saypol: I think I should make the observation that Mr. Kuntz shouldn't get too excited——

Mr. Kuntz: Mr. Kuntz is not excited.

Mr. Saypol: —because we will ask your Honor to charge as to each defendant in the case, that a single overt act as to any and all, may be mentioned.

The Court: Oh, Mr. Saypol, please. I will instruct the jury on the law. I know what Mr. Kuntz has in mind, and I will see that the jury understands fully what the law on

the subject is. You need have no fear or no concern about that, Mr. Kuntz and Mr. Saypol.

Mr. Kuntz: Mr. Kuntz in all his excitement never makes a wrong statement or improper statement.

The Court: Of course not, neither does Mr. Saypol.

Mr. Kuntz: I wish Mr. Saypol would do as little harm in his calmness as I do in my excitement.

[fol. 2097] The Court: Let us have no more. We are near the end of this case.

Mr. Kuntz: May we have an exception to your Honor's ruling?

The Court: I gave it to you before.

Mr. Kuntz: And with that exception, if your Honor please, the defendant Sobell desires to rest on the record.

The Court: Very well.

All right, we will take a short recess at this point.

(Short recess.)

[fol. 2098] The Court: Is there rebuttal?

Mr. Saypol: I beg pardon?

The Court: Is there any rebuttal by the Government?

Mr. Saypol: Just two or three short witnesses.

The Court: Very well.

The Clerk: Evelyn Cox.

Evelyn Cox, called as a witness by the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Saypol:

Q. Mrs. Cox, will you sit right back and make yourself easy, like you do in a rocking chair.

You and I had some talk about the Rosenbergs, you remember?

A. Yes, Mr. Saypol.

The Court: Speak up, please, madam.

Q. The Judge asked you to speak up because it is very hard to hear, and everybody wants to hear what you have to say, so you talk loud to me while I talk to you, will you?

A. All right.
Q. Good. Where do you live, Mrs. Cox?
A. 147-16 110th Road, Long Island.
Q. Married?
A. Yes.
Q. Do you have a child?
A. One child.
[fol. 2099] Q. In 1944 and in 1945, were you working?
A. Yes.
Q. What kind of work did you do?
A. Domestic.
Q. At that time did you work part time for some people known as Julius and Ethel Rosenberg?
A. I did.
Q. Where did they live?
A. 10 Monroe Street.
Q. That is here in Manhattan——
A. Knickerbocker Village.
Q. When did you work for them?
A. From September, '44 all though '45.
Q. To the end of 1945?
A. Through the end of 1945.
Q. How about the summer time in 1945, did you work then?
A. Well, no they were away for two or three months. I just don't remember how many, but they were away in the summer.
Q. Did you work all week or only a few days a week?
A. No, three days.
Q. Three days a week?
A. Three days a week.
Q. Do you see Mr. and Mrs. Rosenberg in the court here?
A. Yes, I do.
Q. Will you say where you see them?
A. Mr. Rosenberg is sitting there (indicating).

(The defendant Julius Rosenberg stands.)

Q. And Mrs. Rosenberg next to him?

[fol. 2100] (The defendant Ethel Rosenberg stands.)

A. That's her.

Q. You recognize them?

A. Yes.

Q. Do you remember how the apartment was arranged——

A. Yes.

Q. —when you came in from the hall door?

A. Yes.

Q. There was a living room on the left, is that right?

A. Yes, yes.

Q. And the bedroom and the kitchen and the bathroom were on one side of the living room, is that right?

A. Yes.

Q. And there was a window in the living room?

A. Yes.

Q. In which part of the living room was the window?

A. The east.

Q. I think you told me that is where you used to notice from where the sun came in?

A. Yes.

Q. Sometime in that period while you were working there—I will withdraw that.

Now, the window being at the east, at which part of the apartment was the entrance?

A. Was the what, the entrance?

Q. The entrance to the apartment, the door leading to it from the hall. Is that at the other end of the window?

[fol. 2101] A. The end of the window, that was——

Q. I mean at the other end of the living room, excuse me.

A. Yes, it would be at the other end.

Q. That would be the west.

A. The west.

Q. And is it not the fact that the kitchen and the bedroom and the bathroom were on the south side of the apartment?

A. Yes.

Q. Now, about that time while you were working there, at the end of 1944 and in 1945, did there come a time when you noticed a new piece of furniture there?

A. Yes.

Q. Would you be good enough to look at these pictures, Government's Exhibit 28, and tell us whether you see on

these pictures something that looks like the new piece of furniture that you saw there (handing to witness)?

(The witness indicates.)

Mr. Saypol: May the record show that Mrs. Cox identified illustration No. 2.

Mr. E. H. Bloch: That is on Exhibit what?

Mr. Saypol: Government's Exhibit 28.

Q. How would you describe that piece of furniture? What do you call it?

A. Console table.

Q. What kind of table?

A. A console table.

Q. When can you remember did you first notice that [fol. 2102] console table?

A. I really can't remember that.

Q. Well, was it in 1944?

A. I don't think so. I think it was in 1945 but I couldn't tell you the month or anything like that.

Q. Was there any other new furniture in the apartment?

A. No.

Q. When you saw that new table was there a time you had some talk with Mrs. Rosenberg about it?

A. Yes.

Q. Will you tell us—withdraw that.

What kind of work did you do there in the apartment, cleaning?

A. Well, I dusted the furniture and things like that.

Q. Polished the furniture?

A. Yes.

Q. Cleaned rugs, if they had any, or cleaned the walls and things like that?

A. Yes.

Q. When you saw this new table, did you have some talk with Mrs. Rosenberg about it?

A. Yes. I admired the table. I asked her where it had come from——

Mr. E. H. Bloch: Will you pardon me, Mrs. Cox. In this kind of a general question, your Honor, I don't know whether to jump up and make an objection upon the ground

that this is not proper rebuttal. I am at a distinct disadvantage. I would suggest, if Mr. Saypol will tell the Court in my presence what he is trying to elicit from the wit-
[fol. 2103] ness——

The Court: Oh, I think I know. I think it is quite obvious to me and I don't have to have him tell me up at the bench.

Mr. E. H. Bloch: All right. Well, in that case I am constrained to make my objection upon the ground that——

The Court: I will overrule it.

Mr. Saypol: Mr. Bloch doesn't have to be constrained. All he has to do is to say "objection," and get a ruling, and then depending on the ruling, go ahead.

The Court: Well, he is a little worried about you. He knows that you do not like objections.

Mr. Saypol: Well, it isn't a matter of taste on my part.

The Court: He doesn't want to offend you, Mr. Saypol.

Mr. Saypol: It is not a matter of personal offense. It is just a matter of technical indulgence that I don't like.

Mr. E. H. Bloch: I will take Mr. Saypol's objection and straightforwardly object to the question upon the ground that it is not proper redirect.

The Court: Overruled.

[fol. 2104] Mr. E. H. Bloch: I respectfully except.

Q. Now, we have to have our talk go on, Mrs. Cox. You tell us what you said to Mrs. Greenglass—Mrs. Rosenberg. You see, they got me all mixed up.

What you said to Mrs. Rosenberg and what she said to you about that table. You say you admired it?

A. Yes. I said—I asked her where it came from. It was such a pretty table and she said that a friend of her husband gave it to him as a gift. Then she added that he hadn't seen him for a long time and it was a sort of a wedding present. That is all the talk we ever had about the table?

Q. Did she ever say to you that she bought it in Macy's?

A. No.

Q. Did she ever say to you that her husband bought it and paid $21 for it in Macy's?

A. No, she said it was a gift to her husband from a friend.

Q. Did the table—withdraw that?

Did there come a time when you noticed that the table wasn't where you had last seen it in the apartment?

A. Yes.

Q. And what did you notice about that?

A. Well, the table wasn't there. It wasn't where it usually stayed and I asked her why she had removed it, and she said she had put it away in the closet because the place [fol. 2105] was too congested.

Q. Where had it usually stood, next to which wall?

A. On the north.

Q. The north wall?

A. The north wall.

Q. That would be the wall opposite——

A. The kitchen door.

Q. —the entrance to the kitchen?

A. Yes.

Q. Across the way from the kitchen?

A. Yes.

Q. Was it ever standing in any other place while you saw it there?

A. No, it always stood there.

Q. With that back——

A. Against the wall.

Q. —the console part against the wall.

A. Yes.

Q. Now, was the place congested? Was there a lot of furniture there filling the place up?

A. Well, at one time it was congested and then I don't know, I think she got rid of some of the things. I am really not sure but when the table was removed, I couldn't say whether it was congested or not because I don't remember that.

Q. Did you ever see the table in the closet?

A. Yes, I saw it in the closet several times.

Q. Did it fill the closet up pretty much?

A. No, the closet is a very large closet.

Q. And this table was there from that time on, standing [fol. 2106] in the closet?

A. Yes, sir.

Q. That is the closet which is right next to the bathroom?

A. To the bathroom.

Q. So that if one opened the door to the closet, the electric light from the bathroom would shine into the closet?
A. Yes, sir.
Q. Did you ever see the table outside again in the living room——
A. No.
Q. —up to the time when you left working there in December of 1945?
A. No, I never saw it.
Q. Was there any other piece of furniture in that apartment as new or as good looking or as nice as that table?
A. No.

Mr. E. H. Bloch: Well, I object to that.

Q. Would you say——

Mr. E. H. Bloch: I object to the form of that question, "good looking."
The Court: I will overrule the objection.

Q. Was that the best piece of furniture in the apartment?
A. It was.

Mr. Saypol: That is all.
The Court: Was there any other furniture in the closets?
The Witness: No.

[fol. 2107] Cross-examination.

By Mr. E. H. Bloch:

Q. Mrs. Cox, was there a breakfront in the living room?
A. A breakfront?
Q. Maybe I will try to explain it to you. Was there a——
A. Oh, yes, she used for books, yes.
Q. And how many tables in all were there in the living room?
A. She had a leaf table, a drop-leaf table, and the console, those were the only two.
Q. Were there ever three tables in the living room?
A. No, I don't think so.
Q. Please try to remember, Mrs. Cox.
A. I don't think there were three. There was a drop-leaf table and the console.

Q. Was there a gateleg table?
A. Yes, sir, a gateleg table.
Q. So there were three, were there not?
A. No. That's what I call the drop-leaf.
Q. Oh, I see.
A. The gateleg is what I call the drop-leaf because it had leaves.
Q. And then there was another table that you just described?
A. You mean the console table?
Q. Yes.
A. Yes, sir.
Q. Now what color was the console table?
A. Mahogany color.
Q. What?
A. The color of mahogany.
[fol. 2108] Q. Did you ever hear the name Steingart used in the Rosenberg house?
A. Steingart?
Q. Yes.
A. Never.
Q. Did the Rosenbergs ever tell you that some of their furniture was obtained from a couple who went out to the West, to California?
A. Yes, I know they had some things for some friends of theirs who had gone to California, yes.
Q. And did they ever tell you that some of the furniture in the living room was really the furniture of their friends out in the West?
A. Yes, they had some things, these people in California, and they sent the things.

The Court: When you noticed this table, this was the only piece of furniture that had come in at that particular time?
The Witness: Yes.
The Court: There wasn't——
The Witness: No, nothing else.
The Court: —any other pieces?
The Witness: No, nothing else; just one table.

Q. When did the breakfront come in, Mrs. Cox, if you remember?

A. It was there when I got there.

Q. It was there by 1944?

A. Yes, it was there when I went to work.

[fol. 2109] Q. Did there come a time while you were working for the Rosenberg's when one of the tables was disposed of or sold by Mrs. Rosenberg?

A. You mean the console? That is the only table, and it wasn't disposed of because it was in the closet. Mrs. Rosenberg put it in the closet.

Q. When you left in 1945 was that console table that you just described still in the closet?

A. Yes, it was in the closet. It came in 1945, she got it in 1945.

Q. Now let me understand you, Mrs. Cox. You say that this console table you described came in 1945 to the Rosenberg apartment——

A. Yes, sir.

Q. —is that right?

A. Yes.

Q. Now, how long did the Rosenbergs use this console table before it was put into the closet?

A. Well, that I couldn't say. I don't know; it was outside maybe a month or two months, I couldn't say, I don't know.

Q. Now while it was outside did you notice whether it was used for eating purposes?

A. It was never used for any purposes, so far as I know, never.

Q. You mean it was just a decorative——

A. It was an ornament.

Q. It was just a decorative piece?

A. Yes.

[fol. 2110] Q. Could that console table have been opened up so that it could be used for eating purposes?

A. Well, it had a leaf. It had a leaf, you know, that used to stay against the wall that it could have been used but I don't know that they ever used it. I never saw them using it.

Q. I want you to describe with your hands, if you will, how long this console table was?

The Court: You mean when the leaf was down?

Q. Either when the leaf was down or when the leaf was up. Try to give us the best kind of a description you can.

A. It was about this length (indicating).

Mr. Saypol: The witness indicates about——

The Court: Three feet.

Mr. Saypol: —about three feet.

Mr. E. H. Bloch: About three feet, yes.

The Court: Was that when the leaf was down?

Mr. Saypol: No, I think the witness is indicating the width.

The Witness: Not the width; the length.

The Court: The length.

The Witness: Yes, this way (indicating).

Mr. Saypol: Maybe this picture will help you——

Mr. E. H. Bloch: I will show it to her (handing witness).

[fol. 2111] By Mr. E. H. Bloch:

Q. Now you say, Mrs. Cox, that this console table looked like——

A. Yes.

Q. —this kind of a table in illustration No. 2—do you notice the number 2, Mrs. Cox?

A. Yes.

Q. In this picture would you say that this table in the back here (indicating), the white part is with the leaf down?

A. No, the leaf is not down in that one. The leaf is up. Look at the two leaves there (indicating).

Q. Well, we are using "down" and "up" differently. The leaf is up, in other words, so that the table appears flat; is that what you mean by "up"?

A. Yes.

Q. Now how long would you say the table was when the leaf was up from one end to another end?

A. About this (indicating).

Mr. Saypol: Indicating three feet.

Would you mind, Mr. Bloch, if I interrupt?

Mr. E. H. Bloch: Surely, you may.

Mr. Saypol: Mr. Bloch is either talking or something else or——

The Witness: Different.

Mr. E. H. Bloch: Well, I do not want to confuse the witness.

The Court: The stenographer cannot take everybody [fol. 2112] talking at one time.

You say, Mrs. Cox, he is talking about another thing?

The Witness: Yes, because he don't seem to understand.

The Court: You say he doesn't seem to understand.

The Witness: What I am saying is that the table, it had a leaf down, that it could be turned down and set down and then it could be turned up to stay against the wall.

Mr. Saypol: May I ask one or two questions here, to get this cleared up?

Mr. E. H. Bloch: You may. I want a full elucidation of this console table.

By Mr. Saypol:

Q. Mrs. Cox, I think Mr. Bloch misunderstands. You had told us that this table, No. 2, is the one that looks like the console?

A. Yes.

Q. Now this is the table as you see it in the darker color?

A. Yes.

Q. Now did you notice that in back of the console there is a light sketch of the same table but the leaf is down, is that right?

A. Yes.

Q. Do you notice that?

A. Yes.

Q. Now, I think when Mr. Bloch asked you about the [fol. 2113] length of the table he was referring to the light sketch with the leaf down from front to back, is that right?

A. Oh, yes.

Q. Now you do it my way. You see the table in front of you, the darker sketch with the leaf up as it would stand against the wall, as you saw it?

A. Yes.

Q. How wide would you say it was from left to right if you were standing in front of it?

A. With the leaf up?

Q. With the leaf up?

A. Just as it is, only about this (indicating).

The Court: About a foot.

Q. Now wait. I am saying from front to back, not from one leg to the other.
A. No, I know.
Q. Here is the front (indicating).
A. You are saying across, isn't it (indicating)?
Q. No, I am saying from this leg, facing the front of the table as it stood up against the wall, from the left side of the table to the right side?
A. Oh, well, that is is about this (indicating).
Q. Three feet?
A. Yes.
Q. Right. Now, as it stood against the wall, from front to rear, what was the width?
A. Just about this (indicating).

[fol. 2114] Mr. Saypol: That would be about 18 inches.
The Court: About that.

A. Yes, about that.

Mr. E. H. Bloch: Almost two feet—it is hard to say from here.
The Court: About 18 inches.
Mr. E. H. Bloch: About that; all right.
The Court: Go ahead.
Mr. Saypol: Is that what you want, Mr. Bloch? Now, do you want to know with the leaf down how far it would extend?

Mr. E. H. Bloch: Yes.

By Mr. Saypol:

Q. How high would you say from the top of the table it was to the top of the leaf as the leaf stood up against the wall?
A. That is hard to say, I really don't know.
Q. About the same width from front to back?
A. Yes, about.
Q. About two feet, again?
A. Yes.

Q. So that when the leaf was down, as you see it in this light sketch here (indicating), the table would be about four feet long from here to here, is that right (indicating)?

A. Yes.

Mr. Saypol: Does that help you?

[fol. 2115] Mr. E. H. Bloch: It does; thank you very much, Mr. Saypol.

By Mr. Bloch:

Q. I would just like to ask you one question: When you had a conversation with Mrs. Rosenberg about where the table came from—do you remember you testified about that? Did she or did she not say that this was a gift from her husband?

A. She said it was a gift to her husband from a friend who hadn't seen him for years.

Q. And did she tell you the name of the friend?

A. No, she did not.

Q. Now is it your testimony, Mrs. Cox, that while you were working there during the years 1944 and 1945, that this console table that you have described was the only console table that was delivered or was new furniture in the Rosenberg home?

A. Yes.

Q. Now was the console table that you are trying to describe one which was plainly then this console table in the sense that it had a more modern design?

A. I really don't know.

Q. Maybe I can explain myself. You will notice——

A. Yes, I know what you mean.

Q. In other words, here——

The Court: Wait, let her answer.

[fol. 2116] Mr. E. H. Bloch: I am sorry.

The Court: Are you ready to answer, Mrs. Cox?

The Witness: I am trying to remember. I think it looked exactly like this (indicating).

Q. Exactly like that. Would you say that the——

Mr. E. H. Bloch: I wonder whether the jury would try to follow.

Q. —would you say that the console table, when it was up, had a top which was not straight across but had curves in it?

A. I am trying to remember that but I don't think I could say definitely because I don't think I can remember that. I don't think I can. I really can't remember that; I really couldn't tell.

Mr. E. H. Bloch: Just pardon me one second, (conferring with A. Bloch off the record).

Q. Mrs. Cox, may I ask you whether or not there are other families for whom you worked during the years 1944 and 1945 outside of the Rosenbergs?

A. Other families?

Q. Yes.

A. No, I didn't work for anyone but for her.

Q. And have you worked for anybody since 1945 doing domestic work?

A. I just worked for a lady who lived next to her, in the next apartment in Knickerbocker Village.

[fol. 2116a] Q. And how long have you been living—working for that lady?

A. Oh, I don't know, about a year, about a year.

[fol. 2117] Q. Now, this is 1951.

A. Yes.

Q. Would you say that you have been working for that lady in Knickerbocker Village since 1950?

A. Oh, no, no.

Q. Well, I thought you said about a year.

The Court: That doesn't mean a year from today.

A. No, about a year.

Q. Oh, you worked about a year altogether?

A. About a year. I worked for this Mrs. Laffeur, who was Mrs. Rosenberg's neighbor, and that was in '47, '46—no, I think that was '47; I worked for her in '47.

Q. Now, have you worked for anybody——

A. No.

Q. —since 1947?

A. No, I haven't.

Q. You haven't done any work at all?

A. No.
Q. Of a domestic kind?
A. No.
Q. May I ask you, Mrs. Cox, in the two years in which you worked for Mrs. Rosenberg, did you find Mrs. Rosenberg to be an honest woman?
A. Very.

Mr. Saypol: I object.
The Court: Are you making a character witness out of her?
Mr. E. H. Bloch: Yes.
The Court: Then you have got to ask her about her reputation in the community.
[fol. 2118] Mr. E. H. Bloch: I will.
The Court: And she won't know her reputation in the community because she doesn't live in the community.
Mr. E. H. Bloch: I don't know. She may have discussed Mrs. Rosenberg's reputation with other people in the development. I will ask her. If she didn't, she won't know.

Q. Mrs. Cox, did you discuss Mrs. Rosenberg with any of the people around Knickerbocker Village?
A. I didn't know anyone around.

Mr. E. H. Bloch: All right, that is all.
The Court: Step down, Mrs. Cox.
Mr. Saypol: Thank you, Mrs. Cox.

(Witness excused.)

The Clerk: Helen Pagano.

Helen Pagano, called as a witness on behalf of the Government, in rebuttal, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kilsheimer:

Q. Mrs. Pagano, will you keep your voice up, please, so that all the jurors and counsel can hear you, please. What is your occupation?

A. I am a secretary. I work for John Rogge.

Q. Is that Mr. O. John Rogge?

A. Yes.

Q. For how long have you been so employed?

[fol. 2119] A. About three and a half years.

Q. Now, do you recall a day last June when you saw a man by the name of Louis Abel?

A. Yes, sir.

Q. When did you see him for the first time?

A. He came to the office early in the morning on June 16th to see Mr. Rogge.

Q. It was June 16, 1950?

A. Yes, sir.

Q. Did he see Mr. Rogge on that morning?

A. Yes, he did.

Q. And thereafter did he leave the office?

A. Mr. Abel?

Q. I am talking about Mr. Abel.

A. Yes. He stayed till about noon or so, then he left and came back.

Q. What time did he return?

A. He returned about one.

Q. Did he bring anything with him when he returned?

A. Yes, he brought a package of bills, wrapped in a brown wrapper.

Q. I show you Government's Exhibit 10 in evidence and ask you——

Mr. E. H. Bloch: If the Court please, I object to this. Is there any controversy about the fact that Mr. Abel came to Mr. Rogge and delivered this? I don't think there has been any disputed question.

The Court: Well, I don't think the Government knows [fol. 2120] whether it is disputed or not. Do you concede that that was done?

Mr. E. H. Bloch: Of course. I am not going to be technical about it. Of course. I never disputed the fact that Mr. Abel came to Mr. Rogge and gave him $4,000. in this brown bag.

The Court: He doesn't dispute it.

Mr. E. H. Bloch: I thought that was conceded.

The Court: Very well.

Mr. Saypol: In other words, Mr. Bloch now concedes Mr. Abel's testimony?

Mr. E. H. Bloch: I don't concede anything of the kind.

The Court: No, he is conceding that Mr. Abel came there with $4,000. in a brown bag.

Can she identify the bag?

Mr. Kilsheimer: I think she can.

Mr. Saypol: If something had been said before, I think this would have been unnecessary.

Q. I show you this Government's Exhibit 10 in evidence and ask you if you recognize this (showing).

The Court: The paper container.

A. Yes, this is the wrapper.

Q. Is that the wrapper which was around the money which Mr. Abel brought to Mr. Rogge's office?

[fol. 2121] A. Yes, sir.

The Court: All right.

Mr. E. H. Bloch: Just a second—I am sorry, just a few questions.

Mr. Kilsheimer: I am not finished.

By Mr. Kilsheimer:

Q. Do you know how much money was in the wrapper when it was brought to the office?

A. There was $3,900.

Q. $3,900?

A. Yes.

Mr. Kilsheimer: Your witness.

Cross-examination.

By Mr. E. H. Bloch:

Q. Do you know Mrs. Ruth Greenglass?

A. I have seen her at the office, yes.

Q. Did you see her at the office?

A. Yes.

Q. Did you see her at the office frequently at or about the time of her husband's arrest?

A. Well, thereafter, and she came frequently, yes.

Q. How frequently?

A. It is hard to say.

Q. Every day?

A. No, no.

Q. Every other day?

A. I would say on an average of about once a week or once every two weeks.

Q. Right at the beginning, after her husband was arrested?

A. Well, I don't think right at the beginning; maybe several weeks afterward.

[fol. 2122] Q. Well, did she come around more often to your office right after her husband's arrest?

Mr. Saypol: Mrs. Pagano, will you wait, please. Will you wait just a second.

I thought the only purpose for which this witness was called has been conceded.

The Court: That is correct.

Mr. Saypol: At this point Mr. Bloch is going into a new field. I think he should be cautioned.

The Court: A completely new field.

Mr. E. H. Bloch: I have a right to make her my witness.

The Court: This is part of the Government's case; this is Government's rebuttal.

Mr. E. H. Bloch: That is true.

The Court: This is Government's rebuttal. You can cross-examine the witness on anything that has been brought out. If you want to make her your own witness, she should have been part of your case, which you didn't do. I won't be too technical with you, provided you will be very brief with her.

Mr. E. H. Bloch: That is all I want to find out from her.

The Court: Go ahead.

[fol. 2123] By Mr. E. H. Bloch:

Q. Did Mrs. Ruth Greenglass come around to your office more often right after her husband's arrest than she did later on?

Mr. Saypol: I don't know what that means, if the Court please, "more often," "less often"; I don't know how it is relevant.

The Court: See if the witness knows.

Can you answer the question?

A. I don't think she did. I wouldn't put it that way.

Q. How would you put it? Just put it anyway you want.

A. Well, she would come in from time to time, as she has since we took the case, and I don't think it was more often at the beginning. I just don't recall how often she came.

Q. And could you give us your best estimate as to how many times a week she did come around, a couple of times a week she came around to your office?

A. Well, I think it was hardly more than once a week, but sometimes she would come in and then she would not be back for several weeks. She would come from time to time.

Mr. E. H. Bloch: All right, thank you very much.

[fol. 2124] The Court: All right.

(Witness excused.)

The Clerk: Ben Schneider.

Ben Schneider, called as a witness on behalf of the Government in rebuttal, having been first duly sworn, testified as follows:

Mr. E. H. Bloch: Now, if the Court please, I think I understood the witness when he said "Ben Schneider." I have been informed by my associate, Mr. Kuntz, that this witness' name does not appear on the list of the witnesses submitted by the Government, and I am going——

The Court: This is rebuttal.

Mr. E. H. Bloch: I am going to object.

The Court: The cases hold that in rebuttal the witness not on the witness list, who is not known at that time to the Government, can be called.

Mr. E. H. Bloch: Then, if the Court please, I want to record my objection and may I, for the purpose of pressing my objection, ask this witness a few voir dire questions?

The Court: No, you can't.

Mr. E. H. Bloch: As to when the Government knew about the testimony that he is about to give here.

The Court: Mr. Saypol, what is it you want to say?

[fol. 2125] Mr. E. H. Bloch: I will take Mr. Saypol's statement to that.

Mr. Saypol: I want to cite to Mr. Bloch Goldsby v. U. S., which your Honor undoubtedly knows of, in 160 U. S. 70, 76, and Gordon v. U. S., in 289 Fed. Reporter, and I think his objection is highly improper, but if he wants to ask any questions it is perfectly all right with me.

The Court: Do you want to discuss it with him privately and give him anything, so that he doesn't have to take up the time with any preliminary questions?

Mr. E. H. Bloch: I am willing to take Mr. Saypol's statement as to when the Government knew about this witness.

Mr. Saypol: One question, and I will clear it up.

The Court: All right.

Direct examination.

By Mr. Saypol:

Q. When is the first time in your life that you saw me as a lawyer?

Mr. E. H. Bloch: No.

Q. In any other way?

A. Yesterday.

Mr. E. H. Bloch: That is not it, your Honor. I mean, the first time the Government, not Mr. Saypol.

[fol. 2126] The Court: Just sit down, please, Mr. Bloch. I know the point you are urging and we will cover it.

Mr. E. H. Bloch: All right.

Q. When was the first time, Mr. Schneider, that you had any knowledge, any notice, any conversation with any human being regarding the fact of your being a witness here?

A. Yesterday.

Q. What time?

A. About 11.30.

Q. At that time were you visited by some agents from the Federal Bureau of Investigation?

A. Yes, sir.

Q. And was it the very first time?

A. Yes, sir.

Q. What is your business?

A. A photographer, sir.

Q. Where is your place of business?

A. 99 Park Row.

Q. When you say that you are a photographer, what is the substantial part of your business, what do you do mainly?

A. Passport photographs and identification photographs.

Mr. Saypol: May this be marked for identification, please.

(Marked Government's Exhibit 32 for identification.)

Mr. Saypol: I take it that Mr. Bloch's objection as to the failure to list the name has now been disposed of to his satisfaction.

Mr. E. H. Bloch: No, it is not to my satisfaction.

The Court: He made an objection; the objection is overruled.

[fol. 2127] It is to my satisfaction.

Q. Mr. Schneider, I show you Government's Exhibit 32 for identification (showing). Do you recognize that?

A. Yes, sir.

Q. What do you recognize it as?

A. My place of business.

Q. Is that a photograph that was taken by the agents of the FBI since yesterday when they saw you for the first time?

A. Yes, sir.

Mr. Saypol: I offer it in evidence.

Mr. E. H. Bloch: I would have no objection to it provided you ask him one further question, Mr. Saypol, whether or not this picture of his place of business is the same substantially the same as it was last year, in May or June.

The Court: Yes.

Q. Is your place of business the same as it was last May or June?

A. Yes; yes, sir.

Q. Now, since Mr. Bloch knows what I am going to ask you about, we will ask about May or June.

Mr. Saypol: Will you mark that, please.

(Marked Government's Exhibit 32 in evidence.)

Q. Last May or June or some time in the spring or summer, were you vis-ted by a family consisting of a husband [fol. 2128] and wife and two children, at your place of business?

Mr. E. H. Bloch: Now, if the Court please, at this time I want to register an objection upon the ground that any testimony that is sought to be elicited from this witness with respect to the defendants Rosenberg is improper, upon the ground——

The Court: Why?

Mr. E. H. Bloch: Upon the ground that it is not proper rebuttal.

The Court: Overruled.

Mr. E. H. Bloch: Upon the specific ground that Mr. Saypol, on cross-examination of the defendant Rosenberg, asked him certain questions, with respect to taking photographs, and he also asked Ethel Rosenberg certain questions, and he is bound by their answers. It was collateral matter.

The Court: Collateral matter?

Mr. E. H. Bloch: It was, sir.

The Court: Well, I don't want to get into a discussion with you. It is overruled.

Mr. E. H. Bloch: I respectfully except.

Mr. Saypol: Mr. Reporter, will read Mr. Schneider the question, please.

(Question read.)

A. Yes, sir.

[fol. 2129] Q. About how old were the children, do you remember?

A. At that time they appeared to me about six and four.

Q. Do you remember on what day of the week it was?

A. On a Saturday.

Q. Is that a day that you usually worked?

A. No.

Q. Is that how it is that you remember this visit?

A. Yes, sir.

Q. Do you see the two adults here who visited you at that time?

A. Yes.

Q. Will you point them out, please. Where is the man and where is the woman?

A. (Pointing) That is the man.

Q. You mean the man standing up?

A. Yes.

Q. Is that the woman (indicating defendant Ethel Rosenberg) standing?

A. That is the woman.

Q. Did they have some talk with you?

A. The man did.

Q. Did they order some pictures taken?

A. Yes, they had some pictures taken.

Q. What do you charge for pictures, passport pictures?

A. Well, I charge three for a dollar, sir.

Q. Did you do some work for them as a result of their coming there that morning?

A. Yes.

Q. What kind of work did you do?

A. They ordered three dozen photographs, passport size.

[fol. 2130] Q. Do you get an order like that every day?

A. No, I do not.

Q. How much was the price?

A. About nine dollars.

Q. Did they pay you?

A. Yes, they did.

Q. Did you take pictures of the children, too?

A. Yes.

Q. Passport pictures?

A. Yes, passport size.

Q. Did you have any conversation with the man or the woman, that you have just identified, regarding the use to which they wanted to put the photographs?

A. Yes. As he was leaving he was telling me they were going to France; there was some property left; they were

going to take care of it; the wife—that is, his wife was left some property.

Q. While they were there having the pictures taken, did you notice anything about the way the children were behaving?

A. Yes, they were very unruly, sort of.

Q. What did you do as a result of that? Did they interfere with your work?

A. Yes, I was afraid they would spoil or mess something up and told them to go out and come back in about 20 minutes to a half an hour.

Q. At that time was the work finished?

A. Yes, it was practically finished.

Q. Did you then deliver it to Mr. Rosenberg?

A. Yes, sir.

[fol. 2131] Q. Did he pay you?

A. That's right, sir.

Q. And is that the last time you saw him before today?

A. That's right.

Q. Now, when the agents came to visit you yesterday, did they show you photographs?

A. They did.

Q. Was it from those photographs that you picked him out?

A. That's right.

Q. And is it seeing him here now with his wife that recalls it to your memory that they were the persons who came in?

A. That's right; that's right.

Q. Is it also the fact that you weren't usually open on Saturday?

A. That's right.

Q. Is it also the fact that the order was unusual in size and that it was $9?

A. Yes, that's right.

Mr. Saypol: You may examine.

Cross-examination.

By Mr. E. H. Bloch:

Q. Where are the negatives?

A. We don't keep the negatives.

Q. You don't keep any negatives in your place?
A. No.
Q. Not one?
A. We don't, no.
Q. Not for a day?
A. For a day, but after that——
Q. For two days?

The Court: Just a moment. Don't you want him to answer?

[fol. 2132] Mr. E. H. Bloch: Yes, I thought he did.
The Court: All right, just take it easy, please.

Q. For two days?
A. No, we don't.
Q. Never?
A. No.
Q. Now, there was a photograph shown to you of the inside of your place; I want you to describe to the jury the outside of your place?
A. Well, the outside, I have a display in the window, marked "Photographs, signs and photostats."
Q. Do you have in your window pictures of weddings?
A. That's right.
Q. Do you have pictures of brides and grooms?
A. Yes, that's right.
Q. Do you have pictures of buildings?
A. That is more of a flash, see, to advertise the place.
Q. That is your advertising?
A. Yes, that's right.
Q. Do you have two signs in front of your store, in red, with white lettering, called "Photos"?
A. That's right.
Q. Do you have any large sign on the outside, saying, "Passport photos"?
A. Well, no, I haven't got that.
Q. And in your window, don't you have a sign where you say, "Family photos, passport photos"?
[fol. 2133] A. That's right.
Q. And other kinds of pictures that you take?
A. That's right; identification photographs. I have a sign marked "Passport identification engineers."

Q. Do you keep books?
A. Books?
Q. Do you keep books in your business?
A. No.
Q. Have you any record here to show that you sold to the Rosenbergs?
A. No.
Q. Or that you took their photographs?
A. No, we generally take photographs like this, see, engineers, three for a dollar. We don't keep no records of it.
Q. Haven't you any sales slips in your place of business?
A. No.
Q. None at all?
A. No.
Q. Do you read English?
A. I do, sir.
Q. Do you read the newspapers?
A. I do.
Q. Did you ever read about this case before yesterday?
A. I read it casually, yes.
Q. What papers do you read?
A. I read all the papers, sir.
Q. Do you read the Daily News?
A. I do, sir.
Q. Do you read the Daily Mirror?
A. Yes, sir.
Q. Do you read the Journal?
A. I do.
Q. How regularly do you read them?
A. Well, I read the News in the morning, sir.
[fol. 2134] Q. And you have been doing that——
A. And the Telegram in the evening.
Q. And you have been doing that for months?
A. Yes.
Q. Did you ever see the picture of either Mr. or Mrs. Rosenberg in the News or in the Mirror or in the Journal or any paper?
A. That's right.
Q. You did?
A. Yes.
Q. When?
A. Oh, I can't recall.

Q. How many months ago?
A. I think it was a couple of weeks ago.
Q. A couple of weeks ago?
A. Yes.
Q. First time?
A. Yes.
Q. Did you recognize the pictures that you saw in the newspapers as the pictures of Mr. Rosenberg or Mrs. Rosenberg?
A. No, no.
Q. Not at all?
A. No, I did not.
Q. Didn't mean a thing to you?
A. I didn't think of them; I didn't think of them at that time.
Q. And the first time you thought of them was when?
A. When the FBI men came in and showed me a photograph, a front and side view, and then I saw it, I recognized.
Q. You recognized them?
A. Yes.
Q. What kind of a view did you see of Mr. Rosenberg in [fol. 2135] the newspapers? Was it a front view or a side view?
A. Just a front view.
Q. And did you see a side view of Mr. Rosenberg at any time?
A. No, I don't recall.
Q. Did you ever see a front view of Mrs. Rosenberg in the newspapers?
A. No, I don't.
Q. Did you ever see her picture in the newspapers?
A. No, I don't recall.
Q. You say you read the News regularly?
A. Yes.
Q. And you read the Mirror regularly?
A. Last night they had a photograph of Mrs. Rosenberg.
Q. Let's not talk about last night. I am talking about the last couple of months, since May 1950?

Mr. Saypol: I think Mr. Bloch couldn't catch his answer, because Mr. Bloch rushes over the witness and the witness doesn't get a chance to finish his answer.

The Court: I don't know why he is so exercised. He is usually so calm.

Mr. E. H. Bloch: I think it is because we are past our time.

Q. Is it your testimony that you have never seen a picture of Mrs. Rosenberg since May or June 1950 in the newspapers, until yesterday?

A. That's right.

Q. Never saw her picture?

A. No.

Q. Where do you live?

[fol. 2136] A. 79 Montgomery Street, New York City.

Q. Where is that, what section?

A. That is on the East Side, Lower East Side.

Q. Now, do you usually come to your place on Saturdays?

A. Yes, I do.

Q. So that in response to Mr. Saypol's question, when he asked you about coming down on Saturdays, you didn't mean to say, did you, that you remembered this incident because you came down this particular Saturday?

A. May I answer that?

The Court: Certainly, you may.

A. Yes, I come down Saturday. I generally make up my chemicals and fix the papers for the entire week, clean up the place, you see.

Q. And that is——

The Court: But you don't do any work; is that it?

The Witness: No, no, unless somebody comes in. It is a very slow day, see, Saturday.

Q. But you are usually down there on Saturday through the year, are you not?

A. No, no.

Q. You are not?

A. Not all the time, no. During July——

Q. How many Saturdays——

Mr. Saypol: Give him a chance to answer.

[fol. 2137] The Court: Go ahead.

A. (Continuing:) During July and August I generally take off the Saturdays, see?

Q. And how about the other months?

A. I come in just to clean up—no, the other months, I don't. I come in Saturdays just, as I said before, to clean up and cut paper, make chemicals for the week.

Q. At what time did you come in on Saturday?

A. About 10 o'clock.

Q. And how late do you stay?

A. About 2, 1:30, 2 o'clock.

Q. Now, do you know how far your store is from Chambers Street?

A. From Chambers Street?

Q. Yes.

A. Well, there is a New Chambers Street around the corner.

Q. You are right opposite the Municipal Building here, are you not?

A. That's right.

Q. Then there is a New Chambers Street, which is an extension of Chambers Street; isn't that right.

A. That's right.

Q. Did you ever hear of the development, Knickerbocker Village?

A. Yes.

Q. How far is Knickerbocker Village from your store?

A. Well, I should judge—What, in walking distance or——

[fol. 2138] Q. Let's take walking distance?

A. About ten minutes' walk.

Q. And did you ever have any customers from Knickerbocker Village come around to your place?

A. I wouldn't know.

Q. You wouldn't know that?

A. No.

Q. Did you have any other customers on this Saturday that you say the Rosenbergs came into your place to take pictures?

A. I must have had one or two people.

Q. Who were they, men or women?

A. Men.

Q. Could you tell me what kind of pictures the men took that Saturday?

A. Well, they generally take engineers' photographs, see, pertaining to the Municipal Building.

Q. On a Saturday?

A. Yes, they come down there.

Q. You know that the Municipal Building——

A. Is open.

Q. —is open?

A. Yes, sure.

Q. The offices are open on Saturday?

A. Yes.

Q. Is that why you come down on Saturday, to do business?

Mr. Saypol: That hasn't been his answer, if the Court please.

A. No, I couldn't——

[fol. 2139] Mr. E. H. Bloch: I am asking him.

A. No, I came down to clean up and cut paper and make my developer for the week.

Q. But people do come in on Saturdays and order photographs, do they not?

A. Very—I mean, very rarely. It is not like a regular day's business.

Q. Now, what month was this that you say the Rosenbergs came down on a Saturday?

A. It must have been about the middle of June, because——

Q. Middle of June, what year?

A. 1950, not so very long ago.

Q. Can you give us the day?

A. It was on a Saturday. That is as much as I know.

Q. What time?

A. About 11:30.

Q. Did customers come into your place after the Rosenbergs went out?

A. I wouldn't know; I don't think so.

Q. Now, how many customers do you say came into your store that Saturday, in the middle of June, 1950, to take photographs, altogether, including the Rosenbergs?

Mr. Saypol: Didn't he say one or two, maybe engineers?

The Court: I believe he did.

Mr. E. H. Bloch: I would like to test him again, if I [fol. 2140] may.

A. That particular day or——

The Court: That particular day.

Q. That particular day?
A. About one or two.
Q. Excusive of the Rosenbergs?
A. That's right.
Q. How many came in the previous Saturday?
A. Maybe about two.
Q. And how many came in the subsequent Saturday?
A. About three, that is all. That is how it varies.

By the Court:

Q. Is it fair to say that you never got more than three on any Saturday?

A. Well, your Honor, there is certain times of the year when I really come in Saturday for business. That is around December, that is when the business—we get more on that particular Saturday than these sort of summer months.

By Mr. E. H. Bloch:

Q. Now there are some Saturdays when you do a rather rushing business?
A. Not a rushing business.
Q. Well, a good business?

Mr. Saypol: Did you say "a Russian business" or "rushing business"?

Mr. E. H. Bloch: I didn't know that Mr. Saypol was a punster.

[fol. 2141] The Court: You mean you haven't found it out after all these weeks?

Mr. E. H. Bloch: I have been giving him the benefit of the doubt.

Mr. Kuntz: It seems to me, Judge Kaufman, in a case like this, that humor is out of place.

Mr. Saypol: It is not intended as humor. I just want to be clear what his language was.

The Court: Let's get on. Try to restrain your desire to be another Milton Berle.

Q. Now, did the Rosenbergs take a family portrait?
A. No, they did not.
Q. Did you take the children's picture?
A. I did, sir.
Q. Did you take any of the Rosenbergs together?
A. The children and the woman, Mrs. Rosenberg.
Q. You took them together?
A. That's right.

Mr. E. H. Bloch: Just pardon me one second.

The Court: Mr. Kuntz, if you want to make any suggestions, I might suggest that you do it quietly. I heard it all the way up here.

Mr. Kuntz: I am sorry. I didn't mean to do that.

Mr. E. H. Bloch: Luckily no damage is going to be done, because I am going to ask the very question.

[fol. 2141a] The Court: All right.

Q. Did you see the Rosenbergs from the time you say they took pictures in your place, in June 1950, until the time you walked into this courtroom?

The Court: He answered that question.

Mr. E. H. Bloch: I am sorry.

[fol. 2142] Mr. Saypol: I object to it.

The Court: You object because it has just been answered?

Mr. Saypol: Yes.

The Court: I understood he answered. He said, "No."

Mr. E. H. Bloch: He said "No"?

The Court: That is right.

Mr. E. H. Bloch: I didn't so understand, your Honor.

Q. Now, when Mrs. Rosenberg took these pictures with her children as a group, did you take them standing up?

A. The oldest one, I took standing up, alongside of her, and the youngest one she had it on her lap, sitting in her lap.

Q. Now, did you take any pictures of any of the Rosenbergs sitting on a chair?

A. Mr. Rosenberg and Mrs. Rosenberg.

Q. Together or separately?

A. No, separate.

Q. Did you take the pictures of the children sitting on a chair?

A. No, she was. The child, the youngest child, was sitting on her lap.

Q. I am not talking about that picture where Mrs. Rosenberg and the two children took it as a group, I am talking about the pictures of the children separately; did you take [fol. 2143] any of the pictures separately, sitting?

A. No, no.

Q. All standing up?

The Court: No, he didn't say "all standing up."

A. No, one was standing up alongside the mother.

Mr. E. H. Bloch: Maybe I don't make myself clear.

The Court: The mother was sitting; the young child was on her lap; the other one was standing alongside of her.

Q. Forget about that picture. Let's go to another picture that you took.

A. Yes.

Q. Did you take any pictures of any of the children alone?

A. No, sir.

Q. Or sitting on a chair?

A. No, sir.

Q. Did you take the picture of any of the Rosenbergs alone, sitting on a chair?

A. Mr. Rosenberg, sitting alone; then Mrs. Rosenberg, sitting alone by herself, without the children.

The Court: And then another picture, Mrs. Rosenberg——

The Witness: Mrs. Rosenberg with the two children.

The Court: Did you take any picture of Mr. and Mrs. Rosenberg together?

[fol. 2144] The Witness: No, no, your Honor.

Q. Were all the pictures that you took the same size?

A. Yes.

Mr. E. H. Bloch: No further questions.

Redirect examination.

By Mr. Saypol:

Q. Mr. Schneider, do you know how many sets of pictures are required for passport purposes?
A. They generally come in an- take three, three.

Mr. E. H. Bloch: That is objected to as to what other people might do, your Honor, as not binding upon these defendants.
The Court: He is asking him whether he knows.

A. We generally take three.

The Court: All right, I will sustain the objection. I will strike out the answer.
Mr. Saypol: Very well, I will withdraw it. There will be no necessity for it.

Q. How many $9. orders do you usually have in the course of a day?

The Court: I think he has answered that.
Mr. Saypol: Very well. Thank you.
Mr. E. H. Bloch: I would like just to ask one question.

Recross-examination.

By Mr. E. H. Bloch:

Q. Do you say you do many photos for people who re- [fol. 2145] quire them for passports?
A. You get a few during the day.

The Court: No, he means during the course of your business, regularly; do you do a passport business?
The Witness: Yes, we do passport business.

Q. A few during the day?
A. That's right.
Q. Is that the major part of your business?
A. Identification photographs and passports.
Q. Now, in your experience in taking pictures of people who say they want them for passports, did you ever have any conversation with any of them as to what country they are going to?

The Court: Now, wait a minute. Didn't you just say you weren't interested in what he did with anybody else, in response to Mr. Saypol's question?

Mr. E. H. Bloch: Because I thought that that question was improper, your Honor. I do think that my question is proper, for purposes that I require.

The Court: You want to know whether anybody else told him on any other occasions why they were taking their pictures?

Mr. E. H. Bloch: Yes.

A. Well, why, you get people who like to talk, and well, naturally, you have a conversation, but not often, you know, [fol. 2146] people come in and talkative, like to talk. That is about it.

Q. Who was the gentleman from the Government who came in to see you yesterday? Do you see him in court?

The Court: Look down over there.

Mr. Saypol: Will Mr. Bloch allow me to say that he is not here?

Mr. E. H. Bloch: I certainly will, Mr. Saypol, and I wonder whether you would be good enough to tell the name of the gentleman.

Mr. Saypol: Who is the gentleman?

Mr. Harrington: Mr. Roetting and Mr. Gallaher.

Q. Were there two men who came in to see you?

A. Yes.

Q. What time was this yesterday morning?

A. About 11:30.

Q. In the morning?

A. Yes.

Q. How long did they stay?

A. Well, they came in and showed me the photographs of the people and they didn't stay very long.

Mr. E. H. Bloch: I see. Thank you very much.

Mr. Saypol: I have no further questions.

The Court: All right.

Mr. Saypol: Thank you, Mr. Schneider.

(Witness excused.)

The Court: Any more witnesses?

[fol. 2147] Mr. Saypol: No, that is the Government's case. The Government rests.

The Court: Defense rests?

Mr. E. H. Bloch: Defense rests.

The Court: Do you rest, Mr. Kuntz?

Mr. Kuntz: Just one second, please.

The Court: Do the defendants rest? Is the answer "yes", Mr. Kuntz?

Mr. Kuntz: Not on my part.

The Court: I am asking you whether you rest, too, after the Government's rebuttal?

Mr. Kuntz: We rest, your Honor.

The Court: All right. Now, I had hoped to be able to send it to the jury tomorrow, and I am concerned about whether or not we get it to the jury tomorrow. We have altogether, I would say, about—altogether, both sides, about seven hours of summations that have been asked for. No, I am wrong, about five and a half hours, I am sorry, have been asked for.

I will tell you what we will do, ladies and gentlemen; supposing we start early tomorrow, perhaps we can finish this case tomorrow. Let's start at 9:30 tomorrow morning and see if we can get this case to you, try and get this case to you tomorrow. So the jury may be excused until 9:30.

[fol. 2148] Will counsel please stay here. I will hear motions. The jury will be excused until 9:30 tomorrow morning.

(Jury excused.)

The Court: All right, Mr. Bloch, do you want to make your motion?

ROSENBERGS' MOTION TO DISMISS INDICTMENT AND FOR A JUDGMENT OF ACQUITTAL AND DENIAL THEREOF

Mr. E. H. Bloch: If the Court please, on behalf of the defendants, Julius Rosenberg and Ethel Rosenberg, they move to dismiss the indictment and for a judgment of acquittal upon, one, all the grounds heretofore urged at the commencement of this trial, as well as all the grounds urged at the time of close of the prosecution's case; No. 2, for a judgment of acquittal upon the ground that as a mat-

ter of law, the prosecution has failed to establish the guilt of these defendants beyond a reasonable doubt.

The Court: Motion denied.

Mr. E. H. Bloch: I am not going to go through any arguments, because the Court has just heard them.

The Court: You join in that motion, Mr. Phillips?

Mr. Phillips: I am going to make a different motion.

Mr. A. Bloch: I would like to make a motion on behalf of the defendant Rosenberg.

[fol. 2149] The Court: Yes.

Motion for Mistrial and Denial Thereof

Mr. A. Bloch: I am doing it reluctantly, but I feel it my duty to make it.

I move for a mistrial upon the ground that the frequent questioning by the Court, not intending harm, of course, of witnesses, especially of the defendants, had a tendency of unduly influencing the jury to the prejudice of the defendants and depriving them of their constitutional right to a fair and impartial trial.

The Court: You never took an objection on that ground while I was questioning, Mr. Bloch.

Mr. A. Bloch: Your questions came one at a time, Judge.

The Court: Of course, and there was plenty of time to take your objection at that time, but it may be if I thought that you in any way felt at that time that I was unduly prejudicing the jury instead of trying to keep the issues clearly before them, I may have refrained, but there was never any objection from any of the counsel on that ground, and I think it is purely an afterthought, and I think it is purely done for the purpose of putting anything in the record upon which you might be able to hang your hats in the event there should be an appeal.

[fol. 2150] Mr. A. Bloch: Not at all. It is done in good faith.

The Court: Well, I question it.

Mr. E. H. Bloch: May I say to the Court, as a statement of a lawyer, that we discussed this question very seriously, as to whether or not to make this specific motion at the end of the prosecution's case, and we refrained from making it,

because, we, ourselves, were not satisfied at that time that the motion would have had any real validity.

The Court: Yes.

Mr. E. H. Bloch: But you can understand, your Honor—and I want to say this for the Court, and I, for one, and I think all my co-counsel feel, that you have been extremely courteous to us and you have afforded us lawyers every privilege that a lawyer should expect in a criminal case, but if our conscience would bother us, your Honor, if we didn't make this motion, I hope that your Honor will understand that it is made in the utmost good faith and without in any way trying to impugn the Court.

The Court: Very well, the motion is denied.

Mr. A. Bloch: I may add that my statement is that it was unintentional on your part.

The Court: Motion denied.

[fol. 2151] Mr. A. Bloch: Exception.

Mr. Phillips: If your Honor please, at the close of the People's case, I made a motion which included various parts to it. At that time I stated that my motion is based upon my statement at the opening, that the indictment is brought under a statute, which I then stated is unconstitutional because it violates certainly the First Amendment, equally the Fifth, and probably the Sixth. I make that motion again now, on that ground.

The Court: Denied.

Mr. Phillips: I respectfully except.

I now make a motion on the ground that the indictment as drawn is so vague and indefinite as not to afford our defendant an opportunity to be apprised of the nature and character of the charge and of the facts underlying the charge, so that that indictment is contrary to the provision of, I think it is, subdivision 2 of the Rules of Criminal Procedure, governing the forms of indictment.

The Court: Denied. You need not labor the point.

Mr. Phillips: Your Honor will remember the rule I had in mind.

Now, I say this: While it may not have appeared at the [fol. 2152] time I made the motion at the opening of the case that the motion is made upon real reasoning and logic, now that the case is closed, I ask your Honor to try to

realize the darkness under which we labor in the trial of this case, under the wording of that indictment.

I tell you now that until the opening by Mr. Saypol, I was not aware that there would be attempt to join our client, Morton Sobell, with anything relating to the giving away of atomic energy secrets, underlying the structure of the atom bomb.

Now, that is a statement which I made as a lawyer. That illustrates the vague character of the indictment; and I said to the jury in the opening, "You will find us sitting here, not knowing the precise character of the charge that will be brought against us."

Now, let me say this to your Honor: Suppose for the sake of argument Sobell had come to me when he was arrested; suppose he would prove the language of Elitcher on the witness stand, every word of it, and supposing he had told me a story coincidental and exactly like the story told by Elitcher on the witness stand?

[fol. 2153] Suppose I had then advised him that under that story, it is a story of guilt on his part, understand, I am not admitting any of the facts. Suppose I then said to him that "as a lawyer I have no alternative but to advise you to say that you are guilty, and throw yourself on the court."

Then supposing for the sake of argument at the trial there was all the additional story of giving away atom bomb secrets. Could he have said to me, "What have you done to me, Phillips? I never meant to plead guilty of giving away secrets of the atom bomb."

The Court: No, he couldn't have said that to you.

Mr. Phillips: Pardon me?

The Court: He couldn't have said that to you because as a lawyer you should have said to him, if that had occurred, "No, before I am going to advise you to plead guilty, I want you to understand the law; I want you to understand that the law of conspiracy is this: that once you have joined in a conspiracy, the acts of your co-conspirators are chargeable to you, even if you don't know exactly what they are doing, as long as you have the same common unlawful objective."

Mr. Phillips: I can see your Honor did not get my point.
[fol. 2154] The Court: I get your point.

Mr. Phillips: No, I didn't make myself understood. I said supposing neither he nor I had any idea we were going to try a case of the atom bomb. Suppose all I had was this indictment in front of me and he told me the story of Elitcher, and which Elitcher does not connect him with the atom bomb.

The Court: I still say exactly what I said; it would have been your duty to say, "Look here, Mr. Sobel, you have had some relationship with Rosenberg which I didn't know about, which perhaps you do know about. I don't know. But I want to tell you this, that the law is that if Rosenberg is in this conspiracy with you and he has gone out and done some other acts, and they show that you were in the conspiracy, even if you don't know about these other acts, the Government will charge them against you."

Mr. Phillips: I still haven't made myself understood.

The Court: Well, let us not labor the point. I have your point very clearly. I don't want it labored any more. I think you have made your point very clearly to me.

Mr. Phillips: Then your Honor, this point in relation to the wording of the indictment is not valid.

[fol. 2155] The Court: I think it is. I have already ruled on the question. I ruled before and I rule again that I think that he was fully apprised under this indictment of the charge which he had to meet.

Mr. Phillips: On the assumption that we know more facts than the indictment discloses?

The Court: Correct.

Mr. Phillips: But there are no more facts than the indictment discloses.

The Court: No, not upon that assumption. As I said before, I believe the indictment fully apprised the defendant of the charge which he had to meet, and it is sufficient under the law.

Mr. Phillips: And your Honor's ruling on this motion is——

The Court: Your motion is denied.

Mr. Phillips: I respectfully except.

Now, if your Honor please, on the whole case it seems to me quite clear that no case has been made out of guilt on the part of Sobell beyond a reasonable doubt, and I move for a judgment of acquittal on the ground that the claim in this case are a few statements by Elitcher and nothing else to in the slightest degree connect Sobel with the commission of the crime which was the subject-matter of this trial.

[fol. 2156] The Court: I will let the jury pass on that.

Mr. Phillips: Would you rather take that under advisement?

The Court: No.

Mr. Phillips: I think you should.

The Court: You mean that is what you prefer, but I have to be honest with you.

Mr. Phillips: Your Honor will note my exception.

Mr. E. H. Bloch: May I make just one further motion? I would like to move to strike out the testimony of this last witness, Mr. Schneider, upon the ground that he was not on the Government's list of witnesses and upon the further ground that there is no testimony here that the Government could not with the exercise of due diligence have obtained the testimony from this witness, which if given could have been given as part of the Government's direct case.

The Court: Motion denied.

Mr. E. H. Bloch: I respectfully except.

Mr. Phillips: To avoid any possibility that I left anything out, I want to ask that the testimony of Elitcher does not at all bear out any state of facts of concerted action, concerted action by Sobell and Rosenberg, in connection with the trial of the facts in this case. In other words, the only [fol. 2157] concerted action, allowing every word of Elitcher's to be true, is a concerted action to secure Elitcher and Elitcher's knowledge and Elitcher's information for purposes which Elitcher did not go into. Anything else in Elitcher's testimony which implies what Rosenberg did or implies what Sobell did, is consistent with a theory that each one did it all by himself and on his own and therefore no conspiracy. I don't know if I make myself clear.

The Court: You make yourself very clear, Mr. Phillips. You have a way of expressing yourself which is delightful. Only I don't agree with you.

Mr. Phillips: Your Honor still overrules that?

The Court: Yes.

Mr. E. H. Bloch: If the Court please——

The Court: Oh, no, no, no.

Mr. E. H. Bloch: I am through with all motions, but under the rules I believe that we are entitled to have our requests passed on.

The Court: Yes. Do you want it in advance?

Mr. E. H. Bloch: Prior to the summations, upon the very simple theory that I don't want to say anything in my summation——

The Court: Well, I will tell you what you do, so that we don't waste any time tomorrow, be here at 9:15, and I will [fol. 2157a] tell that to the Government too,—so I will tell you in advance, I will tell you at 9:15 tomorrow just what I am covering in my charge and what I will refuse to charge.

(Adjourned until Wednesday, March 28, 1951 at 9:30 o'clock a. m.)

[fol. 2158] New York, March 28, 1951,

9:15 o'clock a. m.

Trial resumed.

RULING ON PROPOSED INSTRUCTIONS WITH EXCEPTIONS

(The following proceedings were had in the Court's chambers, not within the presence of the jury):

The Court: All right, I am now going to rule on the proposed instructions in accordance with Rule 30 of the Federal Criminal Rules, the proposed instructions on behalf of Julius Rosenberg, Ethel Rosenberg and Morton Sobell.

I understand that you join in these proposed instructions.

Mr. Kuntz: Yes.

The Court: They are incorporated in my charge, I will say, in the language requested or in general form in every respect with the exception of No. 28, which I refuse to charge.

Mr. Kuntz: Which one is that, Judge?

(Mr. Kuntz examines with Mr. E. H. Bloch.)

The Court: And No. 31, which I refuse to charge. Every other request is covered, as I have said, either in the form requested or substantially, in my own language.

[fol. 2159] Mr. Kuntz: Your Honor,——

Mr. E. H. Bloch: May we take an exception, then to the Court's refusal to charge——

The Court: Yes.

Mr. E. H. Bloch: —items No. 28 and No. 31 of the proposed charges of the defendants, either in the specific words as outlined or the substance thereof.

The Court: Very well.

Mr. E. H. Bloch: And I also state to the Court that so far as item No. 42, I am reserving that until I hear your entire charge.

The Court: I have incorporated that.

Mr. E. H. Bloch: Oh, you have?

The Court: Yes.

Mr. E. H. Bloch: That has been granted.

The Court: It is granted substantially with certain additions as made.

Mr. E. H. Bloch: All right.

Mr. Kuntz: Judge Kaufman, we purposely waited until the end of the trial to ask for one additional charge, because we did not know what the rebuttal would bring out; even though it might not affect our client directly, it might indirectly.

We would suggest that your Honor charge that if the jury does not believe Elitcher or if they have reasonable [fol. 2160] doubt as to the truth of his testimony they must acquit Sobell.

The Court: I am covering that. I am saying substantially the only testimony that they must consider as to whether or not Sobell is in the conspiracy is Elitcher's, plus the flight testimony.

Mr. Kuntz: All right.

Mr. Phillips: If they have reasonable doubt——

The Court: If they decide he is in, they will consider that.

Mr. Phillips: But if they have a reasonable doubt as to the truthfulness of his testimony——

The Court: Well, I covered that.

Mr. Phillips: You covered that.

The Court: Now as to the Government.

Mr. Saypol: Well, reasonable doubt not as to his testimony but as to the whole case.

The Court: Not reasonable doubt but they have to believe him. They have got to believe him. That is the way it is put. If they don't believe him there is no case. They must believe him and then they can only find him guilty if they find that he is guilty if they find that he is guilty beyond a reasonable doubt.

Mr. Kuntz: Would you say that they must believe?

The Court: I say substantially in that form, that the [fol. 2161] only testimony that they can consider in connection with Mr. Sobell is testimony of Elitcher plus the flight testimony as to whether or not he is in the conspiracy.

Mr. Kuntz: Now, let me ask——

The Court: That was without your request, may I say.

Mr. Kuntz: This is a request, but not to charge.

The Court: Do you want it on the record?

Mr. Kuntz: No.

The Court: Off the record.

(Discussion off the record.)

Mr. Saypol: On the record: Judge Kaufman, may I intersperse and interrupt? Mr. Lane calls to my attention in this discourse between Mr. Kuntz and the Court there has been overlooked the testimony of Danziger as it affects Sobell.

Mr. Kuntz: Danziger was only on the question of flight.

The Court: He is a flight witness, and that is what I say.

Mr. Saypol: All right.

The Court: I said before, Elitcher and all the flight witness.

Mr. Saypol: All right. I do not know whether your Honor [fol. 2162] intends to review the testimony and the evidence.

The Court: I am reviewing it in very general form—not specifically but in general form; and I am characterizing what I understand to be your case and I am characterizing what I understand to be the defense case.

Mr. Saypol: Well, I intend to mention Danziger in my case.

Mr. Kuntz: Well, I intend to also.

Mr. Saypol: Good.

Mr. Phillips: OF course, your Honor understands despite our requests to charge in relation to Elitcher's testimony this morning, that I still will except to your theory of the nature of the conspiracy.

The Court: I wouldn't be surprised, Mr. Phillips, if you will except to everything I tell the jury, including when I tell them to do justice in the case.

Mr. Phillips: No. Why do you come to that conclusion?

The Court: You do not even know what I am going to charge yet, and you are saying of course you want me to understand that you are going to except.

Mr. Phillips: I had very little objections in this case. I say to the theory that you expressed in this case.

The Court: Now off the record.

[fol. 2163] (Discussion off the record.)

Mr. Saypol: How about our requests?

The Court: On your requests I would say every one of yours is all right, with the exception of No. 12, which I am covering generally in my own form—that is on corroboration.

Mr. Saypol: And we have submitted a supplemental one.

The Court: Yes, that will be covered.

Mr. E. H. Bloch: If the Court pleases, in connection with the Court's disposition of the Government's requests——

The Court: I am not saying that I am going to charge in their very language, but I am going to cover generally.

Mr. E. H. Bloch: You see, it is on account of formulations that I have reservations.

The Court: Which one?

Mr. E. H. Bloch: For instance, request No. 4, in that this argumentative, in my opinion, rather than stating the law as it may be on the charge, but I am going to wait until the Court charges and see the context at that time.

Then No. —well, the same kind of objection goes to request No. 8, and certainly an objection is going to go to [fol. 2164] request No. 10; and as far as request No. 11,

with respect to accomplices, I submit that that ought to be clarified to the extent that an accomplice's testimony is to be considered on a different standard.

The Court: I am using yours pretty much.

Mr. E. H. Bloch: Then I suppose if both are taken——

The Court: I am using yours pretty much on accomplices. I think you asked me to name the accomplices in yours, and I do.

Mr. E. H. Bloch: Yes, sir. And so far as request No. 14, I do not believe that covers the Gorin case or the Heine case——

The Court: My charge was drafted five days before I received the Government's requests, that I can tell you.

Mr. E. H. Bloch: All right.

The Court: I cover the Gorin case in my own language, as I did the others.

Mr. E. H. Bloch: Just the last one, request No. 15. I would like to call the Court's attention that I object to that because of the fact that the intent mentioned in that request is not the intent required by the statute. It is not just generally an evil intent, but must be a specific intent to advantage a foreign government——

[fol. 2165] The Court: Oh, listen, I will cover that subject.

Mr. Kuntz: Judge Kaufman, I wrote out a few words, what I had suggested. Can you read it (handing to the Court)?

The Court: (After examining) As I said before, I am going to charge—I haven't got my charge with me here, so I can't tell you exactly the language I use, but I do cover the testimony as it pertains to Sobell, and I tell the jury what they are to consider and what they must believe.

Mr. Kuntz: But isn't that a fair request?

The Court: No. The alternative isn't exactly proper. If they do not believe the testimony of Elitcher and the testimony of these other witnesses, then there is no case.

Mr. Kuntz: No, no——

The Court: Just a moment. Now if they don't believe that the Government has proven beyond a reasonable doubt the guilt of Sobell, even if they do believe the testimony, then they must acquit also.

Mr. Kuntz: Well, that I certainly ought not to object to, but if they do not believe Elitcher, there is nothing to decide.

Mr. E. H. Bloch: Just one last word: I assume that all [fol. 2166] defendants reserve our rights to object to any portions.

The Court: I will call you up to the bench after the charge and at the bench you will be able to except.

Mr. Phillips: Judge, do I understand the script that my associate——

The Court: Listen, you have had over a week's notice to give me requests. I hounded you and pounded you and then up comes a formal request to charge. I was drawn by Mr. Bloch's office in which each and every one of you joined. Then you suddenly hand me a slip of paper. When I get through with my charge you can make whatever exceptions you want, and you can make whatever requests you want and I will at that time deal with it.

Mr. Phillips: All right. I just did not want you to think——

The Court: I know you are not waiving anything. I have come to the conclusion that you are not waiving anything.

Mr. Phillips: No. I do not want you to think that we deliberately thought of it at the last minute. We did not happen to think of it. We made the work as easily as possible. We joined in the other man's requests.

(The following proceedings were had in open Court in the presence of the jury:)

[fol. 2167] SUMMATION BY MR. E. H. BLOCH

Mr. E. H. Bloch: May it please the Court, ladies and gentlemen of the jury, it is usual when you come into a house to say good evening, and it has sprung up in court that there are certain social amenities, certain preliminaries, certain graces that one goes through before one gets into the facts of a case, and I would like to say to the Court on behalf of all defense counsel that we feel that you have treated us with the utmost courtesy, that you have extended to us the privileges that we expect as lawyers, and

despite any disagreem-nts we may have had with the Court on questions of law, we feel that the trial has been conducted and we hope we have contributed our share, with that dignity and that decorum that befits an American trial.

I would like to also say to the members of Mr. Saypol's staff that we are appreciative of the courtesies extended to us, and even though Mr. Saypol and I have engaged in a certain amount of repartee, it doesn't mean anything; it happens in every trial; and we feel, as we come here in the closing stages of this case, that as much has been done both by the prosecution and by the defense to present to you the [fol. 2168] respective sides of this controversy.

Now I want to take your minds back, ladies and gentlemen, to something you were asked on your voir dire examination, to something that you were asked by me and I think as well by other counsel when you took your seats in the jury box: We were all very careful, very meticulous, the Court and counsel on both sides, to get a jury, a body of American men and women who would come to this case with an open mind and who would decide this case on the evidence that was presented in this courtroom in this court from this witness chair that is now silent, but which was so eloquent for many, many days. And we wanted that because if a juror comes in to try somebody, to determine his guilt or his innocence in a criminal case, and this would be true in any case, if he or she should not come in with a preconceived notion or a preconceived judgment or impression which would make it impossible or very difficult to decide the case on the facts as presented and on the law as the Court will give it to you later after the summations of all counsel.

The fear that an impartial jury could not be secured was particularly important in this type of case. Now, all of you are New Yorkers or you come from the environs of New York. We are a pretty sophisticated people. People can't put things over on us very easily. We are fai-ly wise in [fol. 2169] the ways of the world and the ways of people and we all know that there is not a person in this world who hasn't some prejudice, and you would be inhuman if you didn't have some prejudice. But we ask you now as we asked you before, please don't decide this case because you

may have some bias or some prejudice against some political philosophy.

I think by the time we get through here and by the time the Court charges you, you will find out as you have been told repeatedly that these defendants are being charged with conspiracy to commit espionage. This is a very, very serious crime, one of the most serious crimes that we know under our law. They are not charged with being Communists, because if they were charged with being Communists they would not be defending themselves against the indictment in this case. It would be an entirely different indictment. They would be charged with different acts.

THere is one question for you to decide, just one: Did these defendants agree and confederate with each other and with others to transmit information relating to the national defense of the United States to the Soviet Union with that intent or reason to believe that that information so transmitted would be advantageous to the Soviet [fol. 2170] Union.

Now, although the statu-e reads—and the Court has read you the statute and I merely want to recall it to you for the moment—that it is a crime to transmit this information, where there is intent or reason to believe that it would be to the injury of the United States or to the advantage of a foreign power, there is no claim here that this transmittal was to the injury of the United States. I merely state that to you so that you will understand as clearly as I can express it to you what the charge is. If you want to convict these defendants because you think that they are Communists and you don't like communism and you don't like any member of the Communist Party, then, ladies and gentlemen, I can sit down now and there is absolutely no use in my talking. There was no use in going through this whole rigmarole of a three weeks' trial. That is not the crime. The crime is conspiracy to commit espionage, and if you find, or if you think—and that thinking cannot be eliminated from your mental processes—that these defendants are Communists and you want to convict them on that, I say to you, you are not convicting on the crime that they are being charged with. Please bear that in mind.

Now, I said we are sophisticated New Yorkers and we can

[fol. 2171] use our common sense and our understanding of the political climate of our times. We know that there is a great tension now in the world. We know that there is great tension by reason of the differences between this country and the Soviet Union. We know that communism is being attacked repeatedly here in the United States as a doctrine which is inimical to the interest of the United States. But believe me, ladies and gentlemen, I am not here; other defense counsel are not here as attorneys for the Communist Party and we are not here as attorneys for the Soviet Union. I can only speak for myself and my father. We are representing Julius and Ethel Rosenberg two American citizens, who come to you as American citizens, charged with a specific crime, and ask you to judge them the way you would want to be judged if you were sitting over there before 12 other jurors.

I say that because unless you keep your minds open and your minds should be open even at this time, although you should have done a lot of thinking about this case up to this point, unless you do that, then there is a farcical trial.

Now then, let's come to the evidence in this case, not the evidence that has been interpreted by some layman or some newspaper person who wants a lot of publicity; not any [fol. 2172] perverted inferences that are drawn from testimony. You know more about this case than anybody in the United States, because nobody has listened so attentively to the evidence as all of you. You know, we lawyers sit there and you think we go through certain motions and we do, and we are busy, but every once in a while we take a look over and we try to look at your faces and we try to see underneath your faces and we are always hoping that maybe we have made a point that hits your understanding and you will be sympathetic. We try to woo you.

Forget about us. I told you at the beginning, we are mechanics; we are mechanics. We are here for the purpose of presenting to you, through witnesses, a client's case; and I told you also at the beginning that lawyers usually dominate a courtroom. We have mouthpieces; we are glib. Forget about our mouthpieces; forget about our glibness. Keep your mind fastened on the evidence and it is the evidence that I want to discuss with you.

Now, you have been fortunate in a way this is a very celebrated case and you have been unfortunate in another way. You have been fortunate because you have seen unfolded before you one of the most moving dramas that any human being could concoct. You have seen a brother testify [fol. 2173] against his sister, in a case where her life might be at stake. You have seen issues dealing with the atomic bomb, the most terrible and destructive weapon yet invented by man. This case is packed with drama. Playwrights and movie script writers could do a lot with a case like this. You have been fortunate. You had a front seat.

But because you had that front seat, you also are unfortunate, because now your job has to be done. You have a very heavy, you have a very serious responsibility. You have to weigh the guilt or innocence of another human being, charged with a serious and grave part, and you have to determine from your judgment, from your conscience, from your honest understanding and conviction, whether or not these human beings, that you are judging, are going to be convicted, with a possible death penalty, or whether or not these human beings are going to be acquitted.

I am confident, I am confident that when you took your oaths, you meant what you said and you swore to. I am confident you are going to analyze, scrutinize, most carefully probe every piece of evidence that has been introduced into this case and begin to weigh and begin to evaluate and say to yourselves, "What is the probability here?" And "What is the probability there?" Because [fol. 2174] in the last analysis you, sitting here in this jury box, constitute the bedrock of American justice, which is founded upon the concept that it is the average man and woman that has the wisdom to decide what is a fact and what is not a fact. You are all intelligent people. I say again, you are developed people; you are fortunate in living in a big city like New York, where ideas percolate and are exchanged, and in the course of that we become wiser people. People can't put things over on us easily.

I want to try to marshal the facts for you. Theoretically, a lawyer, when he sums up, is supposed to aid the court.

We are supposed to recapitulate the testimony for you. We are supposed to make a resume for you, because nobody expects you to remember, especially in a trial like this, everything that has taken place and has been testified to during three weeks of packed testimony. We are supposed to give you a bird's eye view. That is the theoretical aspect.

But I would be kidding you and I would be kidding the Court if I told you that I could do this so objectively, so dispassionately as not to constitute to be a special pleader. I am a special pleader, and if in analyzing the testimony for you I naturally will put the most favorable inferences to benefit my clients, don't be surprised and take it with a [fol. 2175] grain of salt, but what I want you to do is to listen — what I have to say about the analysis of the evidence and groove your mind along that level of thinking, so that you can counterpose the things that I said to you and the inferences that I say you should draw from this evidence against the things that Mr. Saypol will say to you when he comes to sum up on behalf of the prosecution.

Let me say in short that what I am doing here is giving you one side of a picture. Mr. Saypol will give you another side of the picture, and all I am asking you to do is, when you go in the jury room, before you arrive at a final determination, take every argument I give you, subject it to analysis, tear it apart as much as you can, and if what I say makes sense, if it makes logic, then I hope that you will accept it. I will expect you to accept it if it means something to you, if it makes sense to you, if your common sense, if your experience in your life dictates that what I say about this case has any bearing or has any validity.

Now, let's see. Two kinds of evidence came out of that witness box. One kind of evidence we lawyers call "oral evidence." That is the evidence that comes out of the mouths of people. Then we have another kind of evidence that we call "documentary evidence." Documentary evi [fol. 2176] dence is evidence that is tangible, that is palpable, that is capable of being seen, and those are what we call exhibits; and I would like now to take the exhibits in this case, not only for the purpose of refreshing your

recollection, but for focusing your attention upon what I consider to be a very important element in your deliberations.

Now, what are these exxhibits? Here is Government's Exhibit 1. Government's Exhibit 1 is a true copy of the security regulations at Los Alamos Project. Is there any dispute that this is a bona fide document? Is this exhibit in the handwriting or has it been manufactured by or is it a product of the work of the defendants Julius Rosenberg and Ethel Rosenberg? Is there any doubt that it is not?

Government's Exhibit 2 is a sketch. Whose sketch is that, ladies and gentlemen? Is it Rosenberg's sketch? Is it Ethel Rosenberg's sketch? Or is that a sketch that was drawn by David Greenglass? Any doubt about that? I think not.

[fol. 2177] Government's Exhibit 3 is a picture of Mike and Ann Sidorovich. Is that Rosenberg's making? Is that Ethel Rosenberg? These are friends or were friends of the Rosenbergs. Any dispute about that? No dispute.

Government's Exhibit 4 is a Jello box. You have seen that. This is not claimed to be the specific Jello box that was used at the specific time. This is a Jello box. Is there any claim that this Jello box came from the Rosenbergs? This is a Jello box. Now, the testimony is a Jello box like that was cut up in the Rosenberg's house, but is there anything in this exhibit from which you can say "Yes, here it is, this is it." Any question about that?

Then you have also in here of course the sides, the cut-up sides of this Jello box, Government's Exhibits 4-A and 4-B.

Then you have Exhibit No. 5. The Exhibit No. 5 is a photograph of Harry Gold. Does anybody dispute that that is Harry Gold? You saw him on the stand. Is there anything in the case that Mr. Rosenberg was over here, or just Harry?

Government's Exhibits Nos. 6 and 7 are sketches. You will remember those are the sketches that Greenglass gave to Gold out in Albuquerque, New Mexico, on June 3, 1945. [fol. 2178] They were prepared for this trial. Is this Rosenberg's sketch or is it Greenglass' sketch? Is there any doubt that this is Greenglass' sketch? And isn't that

true of Government's Exhibit 7 which was given to Gold at or about the same time?

And then there is Government's Exhibit 8 which is empty. That is the one that has been impounded. That is a sketch made in the handwriting or by Greenglass. Is there any dispute about that?

Now we come to Government's Exhibit 9. Government's Exhibit 9, 9-A and 9-B are photographs of the Greenglasses. Any dispute about that? You saw the Greenglasses testify here. Do you see any fingerprints of the Rosenbergs here? Do you see any pictures of the Rosenbergs here? No, these are the Greenglasses.

Government's Exhibit 10 is a piece of brown wrapping paper. The $4000. that Greenglass got came in this, and while I am talking about this, I would just like you to tuck back in your mind this idea: If Rosenberg handled this, if he brought this $4000., as Greenglass claims, to Rosenberg in June 1950, in order to enable the Greenglasses to escape the country, I am just wondering how it is that this either wasn't subjected to fingerprint analysis or that no fingerprint expert came here to tell us whose finger-[fol. 2179] prints were upon that wrapping paper. But is there anyt-ing as you look at this exhibit which would bring it home to Rosenberg? You can have a paper like this in your house and I could have a paper like this in my house. In other words, this exhibit, as some of the other exhibits, are only connected with Rosenberg by reason of what people said, but the exhibit as you look at it by itself doesn't connect Rosenberg with anything. Now you know these things are very eloquent. All the words in the world cannot wash away something you can see and something you can feel. So far there isn't a single exhibit here that you can say to yourself outside of oral evidence is Rosenberg's. Is there any dispute about that?

Now let us go further. 11 in evidence is a picture of Anatoli A. Yakovlev. That is the Russian who has been mentioned in this case. He was also known as John. Do you see Rosenberg's picture alongside of him? This is a picture of a man. Can anybody dispute that this is a picture of Yakovlev? You never saw that man. I never saw that man, but for the purposes of this case this is his

photograph. There isn't anything that can be attributable to Rosenberg except through the mouths of people.

[fol. 2180] The next exhibit is the same thing. A photograph of an English scientist, a traitor to his country, Dr. Klaus Fuchs. Do you see Rosenberg around? No, you don't.

The next photograph is what? The next photograph is again a photograph of Dave Greenglass and Ruth Greenglass. They were better looking then, but otherwise, is there any dispute who these people are? Do you see the Rosenbergs around? Do you see the Rosenbergs doing anything in a conspiratorial way, from this picture from which you can say ah, ah, there it is, it is right before my eyes. People say they are innocent. How are you going to get around that? Nothing of the kind. There is the plain ordinary photograph of the Greenglasses.

Now let us go on. Exhibit 14. Now what is this? Arthur Thomas—I am sorry, I can't read your handwriting, Mr. Kilsheimer. Can you help me out?

(Mr. E. H. Bloch confers with Mr. Kilsheimer.)

Mr. E. H. Bloch: Yes, 14-A and B are the papers that were used by Gold and Yakovlev in order to communicate with each other. This is an identification. You remember that testimony of Harry Gold. Do you see Rosenberg? Any evidence here that this came from Rosenberg? I don't think [fol. 2181] there is any dispute, that any such claim can or would be made.

Now let us go to Government's Exhibit 15. Government's Exhibit 15 again is a State Department certificate and I don't think I even have to open it up but I will just be thorough. A picture of Yakovlev. Anything about Rosenberg here that you can see with your eyes? I submit not. I don't think there is any dispute about that.

Now then, we have Government's Exhibit 16. This is a photostatic copy of the register of the visit of Harry Gold made to the Hotel Hilton in Albuquerque, New Mexico, in early June 1945. Made by Rosenberg? No. Harry Gold. Do you see anything here, looking at this or looking at any of the other exhibits, just looking at them from which you can say "Ah, ah, there it is, Rosenberg was in on this." So far have you seen anything from looking at these exhibits

from which you as people who never heard about this case could say Rosenberg is in it?

Now then, Exhibit 17 is a check on an Albuquerque bank for $400. That is the $400. that Ruth Greenglass, that sweet little innocent girl who didn't know what she was doing, deposited from the proceeds of the $500. that she got from Gold to aid her husband in spying. Anything about Rosen-
[fol. 2182] berg there that you can see in this paper? Take these exhibits in with you. You are entitled to have them in your deliberations.

Now then, we have a lot of exhibits here. 18 to 20, all dealing with Sobell's trip to Mexico. Anything in any of these exhibits? You take them. I am not going to go through them. Anything in print here from which you can say that Rosenberg was implicated in this conspiracy? Not one piece of paper, not one document.

Now, Exhibit 19 is a letter from E. H. Calvert, Captain of the Corps of Engineers District Intelligence Services to the personnel at Los Alamos in which he says under no circumstances should the name Neils Bohr be used in any correspondence eman-ting from your office. Bohr will always be referred to as Nicholas Baker.
[fol. 2183] That is the top personnel at Los Alamos. I want you to remember that in connection with some of the testimony that I am going to analyze for you. Neils Bohr's name was a secret. It was a top secret at Los Alamos. Nobody except a very few away at the top there were supposed to know that there was anybody like Dr. Neils Bohr, one of the most famous scientists in the world, at Los Alamos.

We will find out who found out about Neils Bohr and when, when we come to Mr. David Greenglass.

Then we have here Exhibit 20. Again, Exhibit 20 is a copy of the regulations that govern the personnel at the Los Alamos project. I believe it was Colonel Lansdale who testified to this, and on the basis of his testimony it was introduced in evidence. It may have been Mr. Derry—one of the two, but it is relatively unimportant. Is there anything here which you can look at and say, "Ah ha, Rosenberg's in on this".

Now, Exhibit 21 again deals with the card of M. Sand.

That deals with this Mexico business of Sobell; and here is another exhibit relating to Sobell down in Mexico; and here is 23-A and B, dealing with another registration of Sobell down in Tampico, Mexico; and here are air line tickets of a certain air line dealing with Sobell's trip to [fol. 2184] Mexico; and here is a manifest dealing with the Sobell trip to Mexico; and here are the shipping lenses having to do with the Sobell trip to Mexico.

Is there anything here which in any way connects Rosenberg with this conspiracy, by looking at the most convincing kind of evidence that a jury can get?

Now we have got something. Now we got Exhibit No. 28. Exhibit No. 28 is a number of console tables. These are not claimed to be any of the console tables in Rosenberg's house. The only thing that witnesses testified to is that one or two of these resemble a console table in Rosenberg's house. Did this exhibit come from Rosenberg's possession? It did not. This came from the Government who attempted to elucidate for you the testimony of a witness, the oral testimony of witnesses. Is there anything, looking at this exhibit, from which you can say, "Ah ha, Rosenberg is in this"?

I do not know whether this was introduced. Was this introduced in evidence (indicating)?

Mr. Harrington: Yes, it is.

Mr. E. H. Bloch: I talk of Exhibit 28. I do not know whether it should be—it is unimportant. There is the inside [fol. 2185] of the photo gallery of the last witness, Mr. Schneider.

Is there anything, looking at this, from which you can state or infer that Rosenberg was implicated in this conspiracy?

The Court: That has a separate number, 32.

Mr. E. H. Bloch: Pardon me?

The Court: This is Exhibit 32.

Mr. E. H. Bloch: It is in 28. That is why I am confused. It may have been an error.

Now, let's see. Then there is 31. Let's see what this is—we are almost through with the exhibits—yes.

I am sorry, before we get to 31, we got an exhibit, we got an exhibit here that ties Rosenberg up to this case.

They got it, they got it in Rosenberg's house. Here it is (indicating). It's a tin can. No question this came from Rosenberg's house. This is it, gentlemen. This is the only piece of documentary evidence that the Government has produced in this case, trying to tie up Rosenberg with this crime.

Let me repeat that. This is the only documentary evidence in this case that has been produced by the Government to tie up Rosenberg with this case. And let's see about this terrible exhibit. It's a can. It says, "Save A [fol. 2186] Spanish Republican Child", and it is issued pursuant to a license from the City of New York, Welfare Department. And this bears a date of somewhere around 1948, but that is not important.

Hollow, hollow—like the case against Rosenberg, as I think I can convince you after we analyze this testimony and analyze the kind of people who testified here and why they testified.

Yes, they got him; they got him with the goods, with a tin can.

Tell me, what is this tin can? I don't care whether you are in favor of Franco, and I don't care whether you are in favor of the Loyalists. That has to do with a person's political beliefs, but can you tell me, and can you tell anybody, and most important, can you tell yourselves in your consciences, that there is anything in this can from which you can state or infer that Rosenberg was guilty of conspiracy to commit espionage?

We got another exhibit. We got another exhibit that ties up the Rosenbergs right in this case. It's a nominating petition, signed by Ethel Rosenberg in 1941. And there, as you will see, with many others she petitioned that Peter V. Cacchione should be nominated so that he could run legally for office as Councilman. Incidentally, you can use your [fol. 2187] memory. Peter V. Cacchione was a Councilman of the City of New York. Nobody ever accused Peter V. Cacchione of doing anything wrong or illegal while he was a Councilman. The mere fact that you or I may not have liked Peter Cacchione's politics is something else again, but this is the evidence, the only documentary evidence that you have so that you can be convinced that you have got some-

thing here, that you can see, that you can feel, that the defendants, if they claim they are innocent, can't get away from.

Does this tie Ethel Rosenberg up with a conspiracy to commit espionage? Ask yourselves that.

And of course I know you are going to be honest with yourselves and admit very readily—not out loud, but very readily that there isn't one piece of documentary evidence in this case to tie the Rosenbergs up with this conspiracy.

Now, there has been testimony about the Federal Bureau of Investigation. They investigated this. I think every American citizen has enough confidence in the FBI to feel that they do a highly competent job when they conduct an investigation, and I think you have a right to feel that in a case of this importance they did more than a competent [fol. 2188] job. They stopped at nothing in their investigation and they would have been derelict in their duty if they did nothing less, to try to find some piece of evidence that you could feel, that you could see, that would tie the Rosenbergs up with this case.

Is that a proper assumption for you to make? I think, and I submit that it is, and yet this is the documentary evidence. These are the exhibits in this case. There are no other exhibits. This is the complete documentary evidence adduced by the Government to tie the Rosenbergs up with this case.

Now, of course, I don't think there is any doubt that if you had this evidence and this evidence alone, you would go into the jury room, you might light a cigarette, you might not light a cigarette; you would come back in half a minute and you acquit the Rosenbergs. And of course the case is not as simple as that. I point out these documents to you at this time because you have a right, as people with common sense, to assume and infer that if the FBI in their investigations found anything belonging to or in the possession of the Rosenbergs, that would tie them up to this case, they could have produced it in court. There is testimony here that the FBI searched the Rosenberg home and [fol. 2189] they took a number of things. Of course the watches have not been introduced in evidence but they will be shown to you. I think both sides will agree that they

should be shown to you, even though they are not strictly marked in evidence.

Is there anything in the Rosenberg home, is there anything—is there any object, is there any piece of evidence that you could see, that you could do something with, without speculating, that ties up the Rosenbergs in this case? I submit not.

Now this case, therefore, against the Rosenbergs depends upon oral testimony.

[fol. 2190] Now here I want to say something to you. I want you to apply the experience of your lives. I want to say to you that you should judge the testimony of every witness that came on this witness stand the way you would judge him if you met him in private life. You have met people in your lives whom you trust. You have met people in your lives whose words you would take for anything at the snap of a finger; and you have met people in your lives who would swear on a stack of a thousand Bibles and you wouldn't believe them. Is that true or isn't it true? I submit that I have a right to expect that you have the same experiences in life as most other people and that you judge people by pretty much the same standards that other people do; and so, when we come to the witnesses, it is not only what they said—it is who said it. Is the person who said it capable of belief ordinarily? Would you believe a perjurer in your ordinary dealings? Ordinarily, would you believe a crook in your dealings, in your private life? Ask yourself this question or these questions, because I am now going to come to some kind of an analysis of the witnesses.

See, that witness chair is empty now. It is silent. But machines weren't up there talking; human beings were up there talking, people of flesh and blood, people who had hopes, people who have fears, people who have ambitions, [fol. 2191] human beings; and I want you to judge their testimony as you saw them as human beings, and we got a pretty good picture here of them testifying, because you have been fortunate, because the Judge has been fairly lenient in permitting counsel to develop for you the kind of people who testified here.

You know, you could teach a parrot to get up there and tell a story, but you wouldn't believe a parrot. You can

teach anybody—anybody, to get up there and tell a story. That doesn't mean that you can believe him. Before you believe anybody who was willing to swear away the life of somebody I think that justice dictates that you consider the type of person testifying.

Now, who are the main actors here in this big drama? The main actors, in my estimation, are four. There is Dave Greenglass; there is Ruth Greenglass—that is one team, on this side; and in the other corner of the ring there is Julius Rosenberg and there is Ethel Rosenberg.

Now, remember, an indictment is a piece of paper. It is only a way by which a defendant comes to trial. I want you to judge these four, each of these four, as human beings, as certain kinds of people, and in the last analysis, what you have to determine for yourself is whether or not the Greenglasses were telling the truth or whether the Rosen- [fol. 2192] bergs were telling the truth.

Let us take these people. These people painted themselves, by getting up on that witness stand and talking and describing their lives and their backgrounds and their actions and their activities, they painted themselves for you, and we lawyers tried our best to round out the picture, so that you know who was giving testimony and whether or not you could give credence to the stories that came out of the mouths of these people.

Now, there are certain secondary characters here; there are certain minor characters. We are going to come to them. But this is a case of the Greenglasses against the Rosenbergs. That is what this case reduces itself down to.

Now, let us take Dave Greenglass. This didn't come out of my mouth. This came out of his mouth. Is he a self-confessed spy? Is there any doubt in any of your minds that Dave Greenglass is a self-confessed espionage agent? He characterized himself that way. What did this man do? He took an oath when he entered the Army of the United States. He didn't even remember what the oath was. That is how seriously he took it. But in substance, he swore to support our country. Is there any doubt in your mind that he violated that oath? Is there any doubt in your mind that he disgraced the uniform of every soldier in the United [fol. 2193] States by his actions?

Do you know what that man did? He was assigned to one of the most important secret projects in this country, and by his own statements, by his own admissions, he told you that he stole information out of there and gave it to strangers, and that it was going to the Soviet Government. Now, that is indisputed. I would like Mr. Saypol, or anybody who is going to sum up on the part of the Government to refute that. Is there any doubt in your mind about that?

You know, before I summed up, I wanted to go to a dictionary and I wanted to find a word that could describe a Dave Greenglass. I couldn't find it, because I don't think that there is a word in the English vocabulary or in the dictionary of any civilization which can described a character like Dave Greenglass.

But one thing I think you do know, that any man who will testify against his own blood and flesh, his own sister, is repulsive, is revolting, who violates every code that any civilization has ever lived by. He is the lowest of the lowest animals that I have ever seen, and if you are honest with yourself you will admit that he is lowest than the lowest animal that you have ever seen.

This is not a man; this is an animal. And how he got up there, and how he got up there. Did you look at him? I [fol. 2194] know you did; you watched him; all your eyes were fastened on him, just as people are fascinated by horror; and he smirked and he smiled and I asked him a question, so that it would be in the cold printed record, "Are you aware of your smile?" And do you know the answer I got? Do you remember it? "Not very." Listen to that answer, "Not very."

Well, maybe some people enjoy funerals; maybe some people enjoy lynchings, but I wonder whether in anything that you have read or in anything that you have experienced, you have ever come across a man, who comes around to bury his own sister and smiles.

Tell me, is this the kind of a man you are going to believe? God Almighty, if ever a witness discredited himself on a stand, he did. What kind of a man can we disbelieve if we are going to believe Dave Greenglass? What is the sense of having witness chairs? What is the sense of having juries subject witnesses' testimony to scrutiny and analy-

sis? Is that the kind of a man that you would believe in your own life or would you punch him in the nose and throw him out and have nothing to do with him because he is a low rebel? Come on, be honest with yourselves, ladies and gentlemen, is that the kind of testimony that you are going to accept?

I am going to come to some other aspects of his testimony [fol. 2195] to show the improbability of it, but take the man; I want to know; I want to know, and I want you to know who it is here who is putting the finger on the Rosenbergs.

And he was arrogant; he was arrogant. He felt he had the Government of the United States behind him. He had a right to be arrogant; he had a right to be arrogant, because I want to say right now that the Greenglasses put it all over the FBI and put it all over Mr. Saypol's staff, and I submit that they are smarter than the whole bunch. They sold them a bill of goods. Every man sitting over here is an honest man. The FBI representatives, Mr. Saypol and his staff, every man of them, they are doing their duty, but you know, even the smartest of us can be tricked, and do you want me to show you how they were tricked?

Ruth Greenglass admitted here that she was in this conspiracy. Is there any doubt about that? Is there any doubt that in the middle of November she came out to Albuquerque and tried to induce her husband to sell secrets? [fol. 2196] Is there any doubt that she grabbed Gold's money and deposited it in the bank? Is there any doubt that she gained by the illegal fruits of her husband's venture? Is there any doubt that she knew all about it?

Ruth Greenglass has never been arrested. She has never been indicted. She has never been sent to jail. Doesn't that cite you as strange? If this is such a terrible crime, and I tell you gentlemen it is a serious crime, a most serious crime, don't you think that the Greenglasses put it over the Government when Ruth Greenglass wasn't even indicted? Something peculiar, and I am not attributing anything wrong to the FBI or the prosecutor's staff, and let us get that straight right now. With all due respect I think the Greenglasses sold you a bill of goods. We are going to come to how they sold this bill of goods, too. We are going to

find out how these people even on the stand to minimize their part. Dave Greenglass said he got into it because he had a hero worship of Julius Rosenberg, and yet every action of that man negatives any such idea of hero worship. You heard the story about the fighting in the business; it doesn't sound like hero worship. Ruth Greenglass got out. She walked out and put her sister-in-law in. That was a deal that the Greenglasses planned and made for themselves, and they made it—they may not have made it by express [fol. 2197] agreement with the Government, and I don't think the Government would countenance anything like that, but tell me, do actions speak louder than words? Is the proof of the pudding in the eating? Is Ruth Greenglass a defendant here?

You try to explain to yourselves how Ruth Greenglass got out of this. She is a free woman. She is taking care of her kids. Maybe I was a little too harsh on Dave Greenglass. Because if the human race can produce a Dave Greenglass I am afraid we would all get terribly pessimistic about the future, but there is always something good in every human being, some trait of warmth, of love. Dave Greenglass loved his wife. He loved her more than he loved himself. I asked him that question. There was a reason for asking that question. And, ladies and gentlemen, this explains why Dave Greenglass was willing to bury his sister and his brother-in-law to save his wife. Yes, there were other factors of course. He had a grudge against Rosenberg because he felt that Rosenberg had gyp-ed him out of a thousand dollars, but that would not have been enough to explain Greenglass's act.

You know, in 1950 the Greenglasses weren't playing with marbles. The Greenglasses knew that their lives were in jeopardy. These are the biggest stakes that human beings [fol. 2198] can play for, and in order to save one's life or the life of one whom one loves, people are capable of terrible things at the expense of others. This really is the crucial question in this case. You are going to be told why did Dave Greenglass do it? What motive did he have? Well, let us see. Dave Greenglass knew that he was an espionage agent. And incidentally, I want you to consider when he became an espionage agent. Do you remember the testi-

mony when his wife said that she came out to him on November 29, 1944, to Los Alamos, to Albuquerque, which is a near town, on their second wedding anniversary, and both of them said that Rosenberg sent them? They wanted some information. Greenglass at first, according to his testimony rejected it. I don't know how many miles Albuquerque, New Mexico, is from New York City, but it is somewhere around 1500. The Rosenbergs weren't there. Nobody was standing with a gun at Greenglass's head, but the next morning he was willing; not only was he willing, but he gave information to his wife right there and then. And what kind of information did he give? He gave his wife the names of Dr. Neils Bohr, Dr. Oppenheimer and Dr. Urey. He knew at that time the names of scientists whose names he should never have known. Does that indicate that Dave Greenglass snooped around long before any supposed offer was ever being made? I want you to think [fol. 2199] about that. Certain things come out at a trial, little things, that are all revealing. Long before the Rosenbergs are supposed to have invited him into this conspiracy, Dave Greenglass already knew what only a man bent on illegal activity would know. And that is undisputed evidence. Undisputed evidence. And you may take that into consideration in determining whether Greenglass was not in cahoots, not only with Gold, because that testimony is as clear as crystal, but also the coincidence that Gold came out and met Dr. Fuchs the same day he met Greenglass.

You know, Greenglass is nobody's fool. Crafty, tricky. Did you hear the testimony? How he extracted information? Asked a question here, snooped around here? He not only tricked our country, but he put such a badge of dishonor upon him, not only because of that fact, but he brazenly told us how he got $5,000, from the Russians in 1950 and he kept it; he didn't feel any conscience qualms about stealing that money. And he even lied about that. Do you remember he said he got $1,000, from Rosenberg in May, 1950? And he said he got it because he had to pay off personal debts. And the personal debts to which he alluded were the debts that he had contracted from people who could ill afford losing money, and that was elucidated [fol. 2200] further by Ruth Greenglass's testimony.

What did he do with the $1,000? What did the Greenglasses do with the $1,000? They paid off some household debts, and $500, they stuck in the bank as a deposit that they were going to put on a bungalow. Very nice, honest people. Very nice, honest people. They were not square with anybody they dealt with according to their own story. Even if you believe everything they said, in terms of their own character, nobody. What makes you think that they were honest with you then? If you found a man in your business or in your personal dealings who was fair with nobody and was crooked with everybody, wouldn't you say to yourself, "Ah ha, I am going to be very careful in my dealings with this person because if he is crooked with everybody, the chances are he is going to be crooked with me."

I want you to think about that. I want you to discuss it in the jury room. I want you to exchange views about that.

As I said, Dave Greenglass is a key figure in this case. And then about that $4,000: the $4,000, they claim they got, and they said at that time they weren't worried, they weren't worried; they had made up their minds that they were going to cooperate with the Government. Both of [fol. 2201] them so testified. They made up their mind- in the latter part of May that they were going to cooperate with the Government.

All right, now let us see how a person acts: if a person feels that he is going to cooperate with the Government he does one of two things: he either goes down to a Government official and says, "Here, I know this, here is my story," or he waits until the Government comes and then when the Government agents come, he tells his story. I know of no third way that a person can act.

Now, let us see what the Greenglasses did. This is their testimony, nobody else's; their testimony; they don't go to the Government. That is conceded. So they waited for the Government to come to them.

Well, if they were going to cooperate with the Government and they were waiting, or I will even put it better for them, fighting for time, trying to save every day for them, and they were waiting for the Government agents to come, what do you think they would have done with the $4,000.?

[fol. 2202] Either they would have kept that $4,000. with that envelope, had it in their home and said to the Government agents, "Here, Rosenberg gave it to me. Here it is, he is the man. This is yours. This is illegal money. This is dirty spy money."

Did they do it? You know they didn't do it. You know what they did. They took this $4,000. and they put it in their chimney.

Now I want you to ask yourselves this question: From whom were they hiding that $4,000.? Were they hiding it from the FBI? Were they hiding those $4,000. from the FBI? And if they were, why? And then in order to insure that that $4,000. would stick with them, they take Mrs. Greenglass's brother and they slip him the $4,000., and he goes to his home and he puts that $4,000. in a hassock. He hid it. You heard my cross-examination. He hid it so that nobody could see it and nobody would know where it was located.

Tell me, is that the act of an honest person? Is that the act of a person who is going to cooperate with the FBI? Or is it the act of people who were preparing something, that would help them, who were plotting, who were building up a story? Now, let's see. Let's see what happened here.

If the Greenglasses were going to cooperate with the [fol. 2203] Government—and here I am going to rely upon your sophistication as New Yorkers—here I am going to rely on your experience, would they have taken $4,000. and given it to a lawyer unless they felt that they needed a protection over and above the protection that a Government witness needs?

You know, $4,000. isn't hay. $4,000. fees don't grow on bushes. You all know that. You all know that $4,000. is a big fee for anybody to pay to a lawyer. And people usually pay those fees when they feel that they are going to go to jail, or something terrible is going to happen to them; but here are people who are going to be Government witnesses.

Now, I want you to ask yourselves this question: Is it not reasonable to assume that when that $4,000. was given to Rogge's office, the Greenglasses were planning for them-

selves a story where they would mitigate and minimize their participation, and as Mrs. Greenglass blurted out here, they expected to tell the Government who the higher-up was, they were going to lead to a higher-up. Well, they were such little innocent people, dupes of somebody else. Why the secrecy about the $4,000.? Why, the payment to a lawyer of $4,000.?

Gentlemen, I want to consider the action of the Green-
[fol. 2204] glasses during this period. Never mind what they say. Consider their actions. How does that comport with the story that they want you to believe? Is it not reasonable to believe that the Greenglasses were trapped animals in May, 1950, that they were not going to cooperate with the Government or had not determined with finality that they were going to cooperate with the Government, but they were also trying to get out of the country. Isn't that the reason they took passport pictures? Do you believe that cock and bull story that Rosenberg told him to take passport pictures and he gave him five sets and they kept one set? They were trapped. They were getting money from some place. Of course they got $5,000. I don't know from whom they got it. They certainly did not get it from Rosenberg because if their story is true that they wanted to cooperate with the Government, they could have gone to the FBI and Rosenberg would have been nabbed right then and there; but the fact remains that when Dave Greenglass was taken in custody and locked up, after Dave Greenglass is alleged to have pointed the finger at Rosenberg, Rosenberg walked out of this building a free man. He was not arrested until a month later.

Well, if in this important case, if in this important case Dave Greenglass had said, "That's the man who made me
[fol. 2205] do it; he is the higher-up," don't you think that the FBI would have kept Rosenberg in custody? I don't know. Does the story sound credible to you?

The Court: Would you like to take a recess at this point?

Mr. E. H. Bloch: Would you mind?

The Court: We will take a five-minute recess.

(Short recess.)

Mr. E. H. Bloch: I just want to talk a little more about the Greenglasses.

Not only are these people self-confessed——

The Court: Just a moment. Sobell's counsel is not here.

Mr. E. H. Bloch: Oh, I beg your pardon.

The Court: Will the Marshall please get him.

(Mr. Phillips enters the courtroom.)

The Court: All right, proceed.

Mr. E. H. Bloch: Not only are the Greenglasses self-confessed spies but they were mercenary spies. They spied for money.

Didn't you get that from both their testimony? They love money. Did you remember that little incident where Greenglass was describing how Gold came in June 3, 1945, in the morning in his house—incidentally, Ruth Greenglass testified it was the afternoon, but I don't care. There is [fol. 2206] no doubt that that incident occurred and Gold put down an envelope containing money, and Gold said to Greenglass, "Is that enough?" and Greenglass, without even looking at the envelope, and without knowing how much money was in there, said, "It's enough."

And then on cross-examination when I asked him how he knew it was enough—you remember that, they were in $20. bills. When you go in the jury room take out twenty-five bills and put them in an envelope and see whether that feels thick or not.

He did not know whether they were $1. bills, $2., $5. or $10. bills.

And then the character of the man is revealed. I asked him this question, "How did it feel?" He said, "It felt good." "Good."

Now you know—I am sure that when the Greenglasses were on the stand and you looked at them, not only for the purpose of focusing your hearing upon them but you were sizing them up—haven't you gotten the impression that these people loved money, that they spied for money? They would do anything for money. They would murder people for money. They are trying to murder people for money.

You see, here is the Greenglass plot and here is where

they put it over the FBI, in my humble opinion. And don't [fol. 2206a] forget, Mr. Norton, Mr. Harrington and all the distinguished lawyers headed by Mr. Saypol sitting at this counsel table, even though they represent the United States of America, they are human beings. You know, there is nothing holy about them any more than there is anything holy about me. They are human beings and you can always impose upon another human being.

[fol. 2207] Now I will tell you what the plot of the Greenglasses was here. Two-fold. Greenglass figured that if he could put the finger on somebody, he would lessen his own punishment; and he had to put the finger on somebody who was here in the United States, and he had to put the finger on somebody who was a clay-pigeon; and that man sitting there (indicating defendant Julius Rosenberg) is a clay-pigeon, because he was fired from the Government service, because it was alleged that he was a member of the Communist Party; and he was a guy who was very open and expressed his views about the United States and the Soviet Union, which may have been all right when the Soviet Union and the United States were Allies, but today it is anathema; and you heard him testify, and he said it openly here, he didn't try to conceal it, "Yes, I thought that the Soviet did a lot for the underdog and they did a lot of reconstruction work" and he went on to recount one or two other things that he felt should be to their credit. Well, that is the kind of philosophy that was expounded in the New Deal days by Franklin Delano Roosevelt and by these gentlemen of the press, sitting here. But, boy, when you do that today, it is different; and in 1950 we had the same kind of climate that we have now. [fol. 2208] This man was a clay-pigeon.

And so Greenglass—and entre-nous, I submit that it wasn't Dave Greenglass; I think this part was hatched primarily by Mrs. Ruth Greenglass. I think you can ascertain people; I think she is the smarter of the two—and this is the perfect target (pointing to defendant Julius Rosenberg); this terrible spy, this big racketeer, who had a thousand dollars and $4000. to hand out, who educated students at universities with Russian money and was paid out untold sums of money.

What kind of a man was this? Is this a Costello? Is this your concept of a racketeer? Is this your concept of a pay-off man, a man who lived in a Knickerbocker Village apartment at $45. a month, and finally his rent was raised after many, many years, was raised to $51. a month, whose wife did scrubbing and cleaning and who had two kids, and they had a terrible struggle and they had to go and borrow money, and he scraped together $1000. in May, 1950 to buy stock in the Pitt Machine Company, and he had to give notes for $4500. for the balance of the purchase price; tell me, does that square with your idea of a pay-off man?

Please ask yourselves these questions, please do. It is important; it is vital. These are the things that are more eloquent than everything that came out of those mouths, [fol. 2209] because this is common sense. Common sense will tell you that this is not the kind of a man who did all of these things.

Now, look at that terrible spy (pointing to the defendant Ethel Rosenberg). Look at that terrible spy and compare her to Ruthie Greenglass, who came here all dolled up, arrogant, smart, cute, eager-beaver, like a phonograph record.

I want you to, when you go into the jury room—I am not going to take the time now—I want you to go to this record. It is available to you and I want you to read her testimony.

The Court: Wait a minute.

Mr. E. H. Bloch: I am sorry.

The Court: The record is only available to be read in the courtroom at the request of the jury. I do not send in the entire record.

Mr. E. H. Bloch: I am sorry, but if the jury desires it, may it have portions of the record read?

The Court: I will tell the jury in my charge that any portions they want to have read, they may request those portions be read.

Mr. E. H. Bloch: Then, may I say to you, ladies and gentlemen, I want to now fasten attention to a certain incident. Your recollection of the record governs, not [fol. 2210] mine, but I want you to, if you feel that this is important in determining whether or not any witness told the truth, to get the record. That is the thing. This

printed record has a better recollection of any of us. Compare Ruthie Greenglass' testimony of the conversation she is alleged to have had with her husband on November 29 and November 30, 1944, in Albuquerque, with her relation of that conversation on cross-examination and you will find that repeated, almost word for word, if not word for word, the whole business; and she wants you to believe that she didn't rehearse this story with Dave and Dave Greenglass didn't rehearse this story with her. Cute, cute. Maybe some of you are more acute in sizing up women than others, but if Ruth Greenglass is not the embodiment of evil, I would like to know what person is?

[fol. 2211] Is Ruth Greenglass the kind of person that can be trusted? Let me tell you something, she is so acute that she wriggled out of this. That is how smart she is. She wriggled out of it. She squirmed through that needle's eye. Well, if she can fool the FBI, I do hope that she won't be able to fool you.

Now just one last parting shot at this great hero, this great hero of America today, Dave Greenglass. Do you think he was inspired by patriotic motives? Sure, you can forgive a person if a person does wrong and has remorse, comes in out of a sense of loyalty to his country, patriotism, in a crime of this kind, and puts the finger on people. But he was so remorseful, as he said almost right from the beginning, and as Ruth Greenglass said right from the beginning, they were so repentant, so contrite, that they didn't want this, and Ruth Greenglass said to David at one time, "Oh, for God's sake, don't show him the atom bomb. That is terrible. We can't take the responsibility." That is when Dave Greenglass came back on the second furlough in September, 1945, and before they saw the Rosenbergs.

And yet after that, let us see how patriotic, let us see what sense of conscience they had: They claim they got $200. from Rosenberg. That terrible remorse, and then here is something quite significant: Ruth Greenglass testi-

[fol. 2212] fied that Dave Greenglass got $800. from Rosenberg in 1947 or 1948, I forget just which. He didn't tell you anything about it. Why? Why didn't he say that he got $800. from somebody in 1948? Do you think he

forgot it? Do you think that this rehearsed, coached witness forgot? No.

You see what he was trying to do was to impress you, and eventually the Court that he was just a little bit of a guy, just a little bit of a guy. And then they were so repentant, they were so remorseful, that they got $5,000. in 1950 which they knew was illegal money and which they appropriated to their own use.

If you want to fall for that story, ladies and gentlemen, you can do it, but I tell you it is a cock and bull story.

Now, I would like to leave this thought in your mind with respect to Ethel Rosenberg, because my father has told me during recess that he feels that I am covering the testimony relating to Ethel Rosenberg sufficiently, at least to his satisfaction, that he won't have to sum up to you, and I am covering both Rosenbergs in my summation.

Did you ever see anything quite so sad, and quite so tragic as her testimony, Ethel Rosenberg's testimony, when she went to Ruthie Greenglass in June, 1950, and pleaded [with 2213] with Ruthie to open up and tell her what was wrong with her kid brother, David. Brought up in the same house; her baby brother. She loved him. And let me say right now, this is not by way of any sympathy. Nobody is looking for sympathy here. I just want you to analyze this coldly, coldly. She wanted her help. She wanted her help; whether her brother did anything wrong or right, she wanted to help him. That is human. Can we condemn every member of a family who wants to stick to another member of the family? What is so terrible? Wouldn't you do it, and wouldn't I do it? And here is a man who had had a fight with Davey to get his stock. And when Davey came around and said he was in trouble, like a schnook—that is a Jewish wor*k*; it means this—I am trying to get the exact translation—well, a very easy-going fool. He goes to his doctor to try to get a false certificate for Davey.

The Court: Is the word stooge what you are looking for?

Mr. E. H. Bloch: Stooge? Stooge.

Now, why did Davey pick on him? Nobody, unwittingly, it is true, but nobody is giving Julius Rosenberg that badge of character that Dave Greenglass did. Because

Rosenberg was a steady, hard-working man. He had a [fol. 2214] little business, trying to make a go of it. He had to struggle with two kids. Davey knew that Rosenberg could be trusted, and Rosenberg wouldn't have to squeal on Davey.

And even out of his own testimony on that exact point I believe we can draw a fair inference that even if he knew that Davey was guilty of the most terrible crime, he would never have squealed on him. That is a terrible thing, isn't it? That is an awful thing. I don't know. You will have to decide in your own conscience whether you think that kind of a man deserves the condemnation to be convicted as a conspirator to commit espionage.

Now, ladies and gentlemen, I say finally before I leave the Greenglasses, that this case hinges on their testimony. If you don't believe the Greenglasses or if you have a reasonable doubt as to whether or not they are telling the truth, I say you should unhesitatingly acquit these defendants, and I want now to review just for a few moments something which is very, very strong in this case: there have been a number of characters dragged in. There is a man by the name of Harry Gold who got on that stand, a self-confessed spy who has been sentenced to thirty years in prison, a very bright man, an intelligent man, a nervous man; remember that; a pathetic figure. But you [fol. 2215] know, hope is abandoned with him. He got his 30-year bit and he told the truth. That is why I didn't cross-examine him. I didn't ask him one question because there is no doubt in my mind that he impressed you as well as impressed everybody that he was telling the absolute truth, the absolute truth. And what did he say? What did he say?

He said that he was in cahoots with a Russian, John; and that he was sent by John out to Albuquerque to see Dr. Fuchs and to see Dave Greenglass. He saw Dr. Fuchs and he saw Dave Greenglass, and he gave Greenglass $500. and he got information from Dave Greenglass.

Now, Gold I think we can infer was a pretty important guy in this conspiracy? Did Gold tell you that he ever met Rosenberg? Did Gold tell you that he ever spoke to Rosenberg? Did Gold tell you that he ever had any traffic

or transactions with Rosenberg? He did not. He did not because he did not. Strange, isn't it? Gold, one of the top conspirators, never saw Rosenberg, never met him, never had any transactions with him.

Now this is the story about the Jello. Get that straight, get that straight. A big dramatic showing was made here—cut in two. Did Greenglass have half of that Jello box? [fol. 2216] No question about that. And when Gold got out to Albuquerque, did he have half of that Jello box? No question about that. Gold said he got his half from Yakovlev. Greenglass said he got his half from Rosenberg. But if Gold didn't know Rosenberg, and incidentally there is no proof that Rosenberg ever knew Yakovlev; on the contrary, Rosenberg swore that he never saw him and the Government never attempted to prove to the contrary. Is it too unreasonable to infer that maybe Dave Greenglass got his one-half of the Jello box from the very man who gave the other half to Gold?

Yakovlev left this country in 1946. Maybe Dave Greenglass figured, "How am I going to point the finger at this man? He is out of the country. That isn't going to do me any good. I have to have somebody whom the Government can nab."

Then Bentley testified, Miss Bentley. You know, there are ministers of the cloth who are deeply religious men, and then there are people who have intruded themselves in the religious field because it is a good thing; they are professional religionists; they make a little money on it. Bentley is a professional anti-Communist. She makes money on it. I am sure the Government doesn't pay her any money. She writes books, she lectures. This is her [fol. 2217] business; her business is testifying.

Now, what did she say? Let us hear what this great authority said, this intellectual moll, this Puritan little girl from New England. Did she ever meet Rosenberg? She was a top gal. She gave orders, she says, to Earl Browder.

Now you and I have read the newspapers that Earl Browder was the head of the Communist Party a number of years back. She gave orders to Earl Browder and she said that Golos, her sweetheart, was the control commis-

sion of the Communist Party and that she was engaged in espionage work, that she had thirty people with whom she worked ferreting out information from the Government. [fol. 2218] Did she mention Rosenberg as one of those 30 people? No.

Now, you know, Yakovlev, Bentley, the top people, they never saw this man. She claims——

Now Bentley, yes, I am sorry, she testified, she had a conversation in 1942 two years before this indictment is alleged to have started, with a man whose voice she couldn't identify.

Listen to that—with a man whose voice she couldn't identify. And this evidence is introduced for the purpose of connecting Rosenberg with Bentley or Golos.

Now I want to tell you this, this is an American court of law, and if you are going to take that kind of evidence against anybody, then—I don't know, I guess we ought to abandon our American system of justice. Imagine, she doesn't know whose voice, and she says yes, she remembers, the man said, "This is Julius."

Now listen to this, "This is Julius"—Julius Rosenberg? Now was it a code name or was it a true name?

Bentley testified she used all kinds of names.

Gold testified that he used all kinds of names. He came into Greenglasses and he says "This is Dave of Pitts-[fol. 2219] burgh."

They weren't revealing their true identity, these true conspirators. All of a sudden they want you to infer that Julius was his true name and not a code name.

Is it reasonable to infer that if any such conversation ever did take place that Julius was a code name?

Now you know, this doesn't ring true. If this man is the higher up, if this man did receive a citation from the Russian Government for being a good boy—listen to this—a citation from the Russian Government. Now, for God's sake, you are intelligent people. Do you believe, or have you ever heard that a Government cites somebody without making public the citation? And do you believe that this little guy (indicating), with a little business, this terribly wealthy man who hasn't got a dime to his name, that he was cited by the Russian Government? If you believe that,

for God's sake, convict the Rosenbergs and let's get an end to this case; but if you don't believe it, then take a lot of the other things that these Greenglasses said in their anxiety to bury the Rosenbergs.

A citation from the Russian Government. Yes, [fol. 2220] watches——

Let's see those watches, will you? Let's see the terrible watches.

(Watches handed by Mr. Harrington to Mr. Bloch.)

Mr. Saypol: They are not in evidence.

Mr. E. H. Bloch: They are not in evidence. Do you object if I refer to them? I will concede that you may refer to them.

Look at these watches——

The Court: They are not in evidence, you know.

Mr. E. H. Bloch: All right, if the Court does not want me to comment on them——

The Court: You can comment on them any way you please.

Mr. E. H. Bloch: All right, I am not supposed to show you the watches but I think as the watches were passed you got a look at them. This is the man that is supposed to have gotten watches from the Russian Government. Did Rosenberg have to tell you that he had a watch and he lost a watch and he made a complaint to the New York Central Railroad Company? That is supposed to be the watch, I suppose, that the Russians gave him.

Do you believe that? Then you can believe anything. [fol. 2221] Now, let us get to the console table because that may be disturbing you.

What exhibit is that console table, please?

Mr. Harrington: 27.

The Court: You have got about 25 minutes to go.

Mr. E. H. Bloch: Thank you very much.

The Clerk: 28.

Mr. E. H. Bloch: Yes.

Here is a representation of some console tables. Now, these are not the console tables that came from Rosenberg's house that were supposed to be there. These are samples, and "Do they look like them" and so forth.

Now, there was a very sweet woman who was put on redirect here, Mrs. Evelyn Cox. There is no doubt in my mind that Mrs. Evelyn Cox wanted to tell the truth, the whole truth and nothing but the truth. I don't think that woman would lie for anybody. Yet, in examining her, she testified that the console table was like this one (indicating), in 2 here (indicating). Take that into the jury room and examine it closely.

You notice how this console table opens up.

Do you remember her testimony?

Now I want to read you something. I want to read you something, and you may have forgotten about it. I want to read you Ruth Greenglass' testimony, page 1014 of the [fol. 2222] record, when Ruthie was saying—she came in, she admired the console table, "Wonderful"—"Where did you get it?"

She said, "Julius, where did you get it" and he says—and she said in response to this question:

"And what did he show you when he turned the table on its side?"——

referring to the console table that he is supposed to have gotten from the Russian Government——

"A. There was a portion of the table that was hollowed out for a lamp to fit underneath it so that the table could be used for photograph purposes, and he said when he used the table he darkened the room so that there would be no other light and he wouldn't be obvious to anyone looking in."

[fol. 2223] "Hollowed out for a lamp." Now, Mrs. Cox did work for the Rosenbergs. She cleaned their home, amongst others. Don't you think, don't you think that if this console table was as described by Ruth Greenglass Mrs. Cox, who probably cleaned that house God knows how many times—she said two or three times a week for maybe a year or two—don't you think it would have caught her eye that there was a hollow out there for a purpose? Did you hear Mrs. Cox testify to anything of the kind? She did not. Personally—no, I am not going to say that; I am going to take that back, because my personal opinion doesn't count; I want to keep that out—but I want you to ask yourselves whether or not Mrs. Cox may not be

mistaken as to the particular kind of a console table, and I want you to take this illustration, number two in, and determine for yourselves whether or not the description of the console table that the Rosenbergs had, which they swore that they got from Macy's, was not this kind of a console table.

Now, the testimony is quite confusing, ladies and gentlemen. I tried to follow it, and I am sure you tried to follow it, but certainly, I say, that we made every attempt here to try to verify the story of the Rosenbergs that they bought that console table from Macy's; and we subpoenaed Macy's, and at first Mr. Kelly who represented Macy's, [fol. 2224] stated that their records for 1944 were destroyed, but in 1945 the United Parcel Service did their deliveries.

Now, this table was alleged to have been bought in 1944 or 1945. All right, that gives a hope that maybe if we subpoenaed the United Parcel Service for the deliveries from Macy's in 1945, we might be able to find this record of this terrible table, this $21. table; and then Mr. Kelly, a very sincere person, called Mr. Saypol and called me that night and said that he had made a further investigation and he ascertained that in 1945 Macy's also made their own services, and the records for both 1944 and 1945 are not available.

But I want to tell you that we made our best efforts to substantiate that story, and unfortunately, the records are not here. But in the state of the record, I say, I say to you, that Mrs. Cox's testimony, if anything, corroborates the Rosenbergs' testimony as to what kind of a console table that is, because if it were any other kind of a console table, as described by Ruth Greenglass, Mrs. Cox would have been the first one to tell you it had a hollow out for photographic purposes.

Now then, I want to call your attention to just one thing here before I finally put these lying Greenglasses out of my mind in my summation. I introduced in evidence, on [fol. 2225] behalf of the defense, a picture of Harry Gold. And this is the late City Edition of the Herald Tribune of May 24, 1950, (exhibiting to jury). Do you remember that the Greenglasses testified that Rosenberg came over

to their house one morning, around this time, with this edition, or with one of the editions, at any rate, of the Herald Tribune, and he said to them that Gold had confessed and to look at his picture; and the Greenglasses said, "We can't identify the picture; we don't know who that man is."

Rosenberg said: "Why, that is the man to whom you gave those secrets in '45; that is the man who gave you the $500."

Now, I want you to compare this picture with Government's Exhibit 5. You did that, I know, in the jurybox before, but I want you to take that in again and I want you to ask yourselves whether or not the Greenglasses were lying or telling the truth when they related this incident. Because the Greenglasses saw Gold; and you remember, I was very careful in asking them what kind of weather it was; was it sunny; was it clear? "Yes, the sun was shining." They were with Gold in the morning, in the house; he must have had his hat off. They took a walk with him in the afternoon. Do you mean to say that a person like Gold, with those gleaming eyes, with that dis- [fol. 2226] tinctive face, with those features, would not be distinguishable and recognizable to a person who had traffic with him? That puts the lie to the Greenglasses' story as firmly as anything that can be shown to you.

It is these little things that count, ladies and gentlemen, when witnesses are on the stand. You know, when a rehearsed witness is on the stand, you can ask him all kinds of questions; she has got prepared answers; you have got to go around him; you have got to cut into him obliquely; you have got to show what kind of a person he is; but once in a while something slips, and in their zeal to bury the Rosenbergs, they slipped; they slipped.

They also slipped on that first January, 1945, visit. I will show you what a fake it is; show you what a fake it is. Two days after Greenglass came back from his furlough, Rosenberg came around the house and said, "Give me information," and he gave it to him; and he said "Write it down," and the next day he came back again. Rosenberg was working for the United States Government at the time, and the proof is undisputed that he had to be at work at

9 o'clock. The Greenglasses didn't describe the time; they said he came in the morning. Now, if Rosenberg came around to the Greenglasses' house to get information in the morning of the first week of January, 1945, then the Government could have produced his Government records [fol. 2227] to show that he was late or he was absent, and they didn't. These are the kind of things I want you to discuss, gentlemen and ladies, when you get into the jury-room.

Now I want to come to Elitcher. Elitcher is a pathetic character. He is really a nice man; Elitcher is a nice, intelligent man.

The Court: You have fifteen minutes, Mr. Bloch.

Mr. Bloch: Fifteen minutes, thank you.

(Continuing) But Elitcher had a Damoclean sword hanging over his head. Elitcher knew that he had made an oath to the Government at the time he entered Government service. He knew that he swore he was not a member of the Communist Party. He knew that he had violated the oath. He knew that he could have been prosecuted for perjury.

Now, you know the FBI doesn't have to come around to you like some of these bullies in some of our police precincts and swat you with blackjacks; they don't operate that way. These men are gentlemen; these men are gentlemen. But when a witness knows that he is in a box, any kind of a suggestion, any kind of an innuendo from a Government agent under those circumstances would necessarily gravitate a man's thinking to fall in line with what the Government would like him to say; and there is no [fol. 2228] doubt in my mind that at the time Elitcher came down in August or late July, 1950, the FBI honestly believed that Rosenberg was guilty of this crime, and Rosenberg was suggested; and listen to Elitcher's testimony; this is the thing I don't understand about it. He first gave you the impression that he came down here and he was here for three or three and a half hours, and that was the end of it. Then upon closer interrogation, it developed that after that he went out to his home with the Government agents and they were there until midnight. Why that?

Now, is there any dispute that Rosenberg came down to see Elitcher twice? None. There might be a dispute about date. Elitcher says, "June, 1944." Rosenberg says, "The first visit was in June." He is not sure. It may have been the summer; it may have been the spring, but it was the time when he was assigned by the Government to the Bureau of Standards for a couple of days to work in Washington, D. C.

Elitcher says that the second visit was in September '45. Well, I want to tell you, some of these people have remarkable memories. I am going to ask you whether you remember whether a certain man came to your house five or six years ago and you would be able to even give me the month, but at any rate, Rosenberg says he doesn't remem- [fol. 2229] ber the month, but he remembers and refreshed his recollection from one of the papers in his union file that he went down there after he had been discharged and he was fighting his case, and he was advised to go see his Congressman; and he went down there; he went down to see some representative of the Federal Workers Union. But it is unimportant; it is unimportant whether it is April or some other month. It is not important. There is no dispute about the fact that Rosenberg was down there twice. There is no dispute about the fact that Elitcher came up to the Rosenbergs and were entertained by them socially; there is no dispute about that.

But I say that there is a very serious dispute as to what Rosenberg said to Elitcher. Do you believe, do you believe, that a man who hasn't seen a classmate of his for six years, will walk into his house and before he is even there an hour he will say to the man, "Get your wife out of the room," and then right there and then make an offer to him to commit espionage? Do you want to believe that kind of a story? Does that sound credible to you? If Sobell was Elitcher's friend, and if Sobell is in cahoots with Rosenberg, then don't you think the logical person to have made the overture would have been Sobell, not an almost complete stranger? Rosenberg had seen him for a fleeting moment at a swimming pool in 1940, but to all [fol. 2230] intents and purposes, Elitcher and Rosenberg was not friends; they were classmates, who casually saw

each other. Do you believe a man is going to come in and make that kind of an overture? There is no doubt in my mind that they discussed politics, and there is no doubt in my mind that Rosenberg said at that time, as he said to you quite honestly, what he thought of the Soviet Union and whether or not there was a second front. Of course people talked about those things. It is a far cry, however, from making an overture to commit espionage.

Take this fact into consideration, take this fact into consideration: If Elitcher had given information, then there would be some point in his testimony. But here is a man who claims he was wooed for four years and saw Rosenberg and Sobell at different times and didn't give them one solitary piece of information.

[fol. 2231] What were they wooing him about? What is this cock and bull story in June 1948 that he met Rosenberg and Rosenberg said, "You stay where you are; don't you leave your Government job"? Well, you may say that to a fellow who is spying with you and from whom you are getting information, but don't say that to a man who you have been trying to woo for four years and who has told you that he doesn't want to have any thing to do with you.

Then Elitcher slipped, also—you see, they all slip, they all slip when they lie exaggerate—he said that he came here one time, purposely, purposely to discuss espionage with Rosenberg; and on his direct examination he said that he came here on official business, I believe, and I began to question him and tried to pin him down. Did his wife come with him? Did he go on official business? Did he sign a travel voucher? He squirmed and he squirmed and he squirmed and he finally said he couldn't recall. Well, on that kind of equivocal testimony, gentlemen and ladies, I tell you, you don't even give a man's money away, much less his life.

Then we come to the Hollywood finisher; then we come to the vulgar and tawdry part of this trial, this phony Hollywood finisher.

[fol. 2232] A man by the name of Schneider got on that stand yesterday, and you heard him testify. His testimony was supposed to convince you that the Rosenbergs at-

tempted to flee this country or had such ideas in their mind.

The man was not on the list of Government witnesses, and the Government contends that only yesterday, at 11:30 in the mor-ing, the last split-second, low and behold, this witness appears.

Now, ask yourself this question: If it is true, as Greenglass testified, that he took passport pictures at Rosenberg's request, and that Rosenberg said to him, "Don't you worry about how I am going to get out; I am traveling a different way, but I will meet you in another country"—I think it was Mexico—don't you think that the FBI, in this important case, would have combed every photography shop in New York to get a negative, in order to ascertain whether or not Rosenberg was taking passport photos? This was in June 1950, when Greenglass was supposed to have told his story, and it is now what? It is now the latter part of March, 1951.

Let's see what this photographer testified to; let's analyze his testimony. Remember at the beginning of my summation I went through all the documents? A negative? A negative? Something you could see, something you could see and say, "That is it"? Oh, no, no negative. [fol. 2233] A bill? Something you could see? Oh, no; didn't have it. And then he said something that opened everybody's eyes, or it should have opened yours—and I am assuming that you people would have had some experience with photographers, like everybody else; once in a while you go to a photographer and have a snapshot, or go with your children and have snapshots; and I am going to ask you to determine this from your own experience—when you go to get a photo for passport purposes, do you pose in a group? Do you pose in a group or do you pose just with your head, to get this part of you (indicating)?

The more the photographer testified, the more he talked, the more we found out about this. Yes, Ethel took a picture with her two children. One was sitting on her lap and one was standing alongside of her. Is that a passport photo? He took some of them sitting; he took some of

them standing. Is that compatible or is that congruent with going to a place to take passport photos?

Did you hear him describe his place? There was introduced in evidence the inside, but I asked him about the outside, because when that cross-examination of Mr. Saypol's came Rosenberg, about 99 Park Row, somebody had to make an investigation of that shop on behalf of the [fol. 2234] defense, and what did the outside of that shop show? It is a plain, ordinary photography shop; no big signs about passport photos. They have pictures of brides and grooms and family groups and buildings; and they had a sign where "Passport photos" was only one of the various items that they serviced or sold in that place, and they also serviced family groups, and Rosenberg told you very frankly and Ethel Rosenberg told you very frankly—and you saw a bunch of pictures here; you know they are not in evidence, but you saw them—of course they took photos with their kids. Haven't you? Haven't you? What is wrong with that? What kind of insinuation? What kind of suspicion? Everything that Rosenberg did is supposed to be torn and slanted.

Now, look, ladies and gentlemen, you saw Julius Rosenberg and Ethel Rosenberg on this stand. You judge them. You saw them. You had an opportunity to study them. I want you to compare them and the type of people they are with the Greenglasses. I want you to ask yourselves, "Are these the type of people who are spies? Are these the type of people who will lie? Does their past life indicate that they are the type of people who will lie"?

I say to you that this case started out to be a big, big case. [fol. 2235] It was going to last months, and it petered out in three weeks; I want you, if you decide—the file is open to you—if you want to read that part of the record where the list of witnesses were read to you, I want you to look and see who was on the list of the witnesses, if you forgot, and I want you to ask yourselves, "How is it that Ann Sidorovich, who is a Government witness on that list, was never called to corroborate that Jello night? How is that? How is it that this peculiar injection of an Al Saurent, in Ithaca, how it is that his wife, whose address is listed at Ithica, was never called?"

And this peculiar method of trying to poison you. To Rosenberg, "Don't you know that Saurent is in Mexico?"

Who knows that Saurent is in Mexico? Is there any evidence that he is in Mexico? So far as anybody knows, he is in Ithaca; he may be in any place in the world. His last known address is Ithaca. Is there any proof that he is in Mexico? But "Mexico" was inserted in your mind to poison you, you see, because Sobell was down in Mexico. [fol. 2236] And then in connection with Sobell, I want to ask you this and relate this to the Greenglass testimony. If Greenglass was telling the truth about the signals with a book, and a finger in the book down before a statue in Mexico City, and then go over to Sweden—do you remember that?—how is it that Sobell, who is supposed to be conferring with Rosenberg, how is it when he went to Mexico, if he were trying to get out of Mexico because of this crime, how is it he did not know about the three fingers and the statue? Does that make sense to you?

Now, I want to conclude very simply. I told you at the beginning and I tell you now that we don't come to you in this kind of charge looking for sympathy. Believe me, ladies and gentlemen, there is plenty of room here for a lawyer to try to harp on your emotions, especially so far as Ethel Rosenberg is concerned: a mother, she has two children, her husband is under arrest.

No, because if these people are guilty of that crime they deserve no sympathy.

No, we want you to decide this case with your minds, not with your hearts, with your minds, because we know that if you will decide it that way, if you will decide this case the way you would decide an ordinary problem that [fol. 2237] comes up in your life, we will be satisfied. We will be satisfied that you either will come to the conclusion that these defendants are completely innocent, or at the very, very least that you would have a reasonable doubt about their guilt.

Now when I say a reasonable doubt, I don't mean a doubt based upon caprice or a doubt based upon a whim. I mean a doubt based upon your reasoning processes or the use of your reasoning processes.

The Court: Your time is up, Mr. Bloch.

Mr. E. H. Bloch: I am winding up now, your Honor.

I have just this last sentence or a few words to say. You have heard the charge. You know the consequences of a verdict of guilty. Punishment is not yours if you find the defendants guilty; it is for the Court, but long before the Court gets this case, the most important, the vital part of the case resides in your power.

Put yourself, if you can, in that defendant's box and ask yourselves, "If my brother or my sister, or if I were sitting in this box, or my child were sitting in that defendant's box, would I convict them on this kind of testimony?"

And lastly, and lastly may I urge you to be [fol. 2238] guided by nobody in this wide world except your own judgments and your own consciences. What I say doesn't matter this much (snapping fingers). What Mr. Saypol says doesn't matter this much (snapping fingers), and with all due deference to the Court, what the Court says on the facts doesn't matter this much, because the factual question is yours and yours alone to decide. This is your job. Nobody in the wide world can take that job away from you and nobody can take that responsibility away from you. It is yours.

And the fate of these defendants is in your hands. And I am hopeful, I am hopeful with this climate, with this hullabaloo about this case, I have got enough confidence in twelve American jurors to believe that they will exercise their individual responsibilities, collectively and separately, that they will bring in an honest verdict.

I don't care, ladies and gentlemen, I don't care whether or not you disagree or whether you all agree at one time or another, one thing alone I ask you, I am entitled to ask that of you under the law, I am entitled to ask—these defendants are entitled to ask that of you as human beings: Please take the evidence and sift it, analyze it, take what I said, take what Mr. Saypol is going to tell you, take what Mr. Kuntz is going to tell you when he sums up for Sobell—[fol. 2238a] take these things, weigh them, weigh them carefully, because in your hands human lives are at stake.

That's all I ask you to do, and I say that if you do that, you can come to no other conclusion than that these de-

fendants are innocent and you are going to show to the world that in America a man can get a fair trial.

The Court: Mr. Kuntz.

[fol. 2239] SUMMATION BY MR. KUNTZ

Mr. Kuntz: May I have the indictment? May I have Government's Exhibit 25?

(Indictment and exhibit handed to Mr. Kuntz.)

Mr. Kuntz: Ladies and gentlemen, I am going to try to be brief. I don't think our part of the case requires the exhaustive examination on behalf of Sobell as in regard to the other two defendants.

We represent Sobell and nobody else. You and I met here three weeks ago yesterday, and I remember Mr. Phillips getting up in front of you, saying, "We don't know what this is all about. We will sit here with you and find out."

Let me show you what I mean. I wanted the other two indictments. The Court has ruled we shouldn't have them. But this one is the one we are charged with (indicating).

Now I want to read you a little bit of this indictment and I want you to read it carefully inside:

On or about June 6, 1944 up to and including June 16, 1950 at the Southern District of New York and elsewhere Julius Rosenberg, Ethel Rosenberg, Anatoli Yakovlev, also known as John, David Greenglass and Morton Sobell did conspire to commit espionage. The rest I am going to abbreviate that way. And then we come to the second page [fol. 2240] and it says here overt acts.

Now, I presume that even a non-lawyer knows what an overt act is, and we find listed in alphabetical order from one to twelve a lot of acts that were supposed to be done in furtherance of this conspiracy, and I defy Mr. Saypol and I defy you to find anywhere outside of what I read to you the name of Morton Sobell.

Now do you see why Mr. Phillips said we don't know what it is about, because in there they don't tell us much about it. We have struggled to find out what it is about prior to coming here, but Mr. Phillips is right when he

said at the start, "We will sit here and listen with you to find out what it is about," and I said, "Harold, don't worry, let us sit down and sit back. We will find out sometime."

And then I observed the most amazing, the most amazing experience of my court life, which as you can see by these hairs is not a short one, and I have been a trial man for over thirty years, and I tell you that I saw the most amazing experience in my court life in this case. I saw my good friend Mr. Harrington and Mr. Norton and Mr. Branigan and Mr. Lane and Mr. Cohn and Mr. Kilsheimer and Mr. Saypol, all of them, like the mountain, they labored and labored and labored, and they brought forth a mouse—Elitcher. When I say a mouse, Elitcher. Will you tell [fol. 2241] me, if you take Elitcher's testimony out of this case, is there any conspiracy against us? Did anybody else say a word about that part of the conspiracy? Oh, I will come to Mexico. But if you take Elitcher out of this case, are we part of the conspiracy?

I am not going to be charitable like Manny Bloch. I have tried cases a little longer than he has. I am through being charitable when the life of a man depends on my actions and my words. I didn't sleep throughout this trial because the life of a man depends on what I do, and let me tell you right now, that whatever conduct took place in this court about witnesses or anything that was said before you, that is on the shoulders of Mr. Phillips and myself; don't put it on anybody else's shoulders. But I am not going to be as charitable as Manny Bloch with this Elitcher.

Why should I be charitable? When I cross-examined him, I asked him, "Elitcher, aren't you a liar?" and he said, "Yes."

"Aren't you a perjurer?" He said, "Yes."

How could I be charitable with a liar and perjurer? Why? Do you and I make it a habit of excusing liars and perjurers? You know, and you probably have met them in your experience, we have people who are psychotic liars, [fol. 2242] we call them. You feel sorry for them. You think they ought to have treatment, and by the way, if I remember right, it is three weeks ago, but if I remember right, Elitcher had been getting treatment for a couple of years, but let that go; that is not the thing I am driving at.

Elitcher was not a psychotic liar; he was a miserable liar, a man who will involve, who will kill another man to save his own miserable skin.

The Court: Let me say right here, ladies and gentlemen, there is not to be before you and you are not to consider what punishment this Court might mete out in the event that you bring back a verdict of guilty. I have told you that time and time again. I haven't interrupted either of the counsel up to this point when they have talked about lies or murder or "will kill." I want you to disregard that completely, because what this Court will do at this very moment is even unknown to this Court. Proceed.

Mr. Kuntz: All I know is what I read in the statute, and that, I presume, is something that I can comment on, and the statute says for this crime that Mr. Elitcher is trying to prove Mr. Sobell guilty of, he can get up to thirty years or death. That is what the statute says.

[fol. 2243] And as a lawyer I read the statute and as a human being I worry. I am not saying what Judge Kaufman is going to give anybody here if they are found guilty. I am not saying a word. I think the statute governs all of us including Judge Kaufman. I tell you I was worried. I didn't sleep all last night. I felt that within my limitation—I am only a human being, but within my limitation I might not get the inspiration to get across to you the way I feel about this case, but since this is my last chance to talk to you, if I don't succeed in getting across to you the way I feel that this case looks like, I fail. And that is why I didn't come into the courtroom this morning. I asked Judge Kaufman if I could stay out and study the record a little more.

And suddenly something occurred to me. All I had to study was Elitcher's testimony. Something occurred to me and maybe I put my finger on it. Maybe. I don't know. But I looked through these typewritten minutes and picked out wherever Sobell's name was mentioned, and I came across the first mention at page 315 and 316.

What was that incident? That was the incident of June, 1944, when Rosenberg was supposed to have gone to visit Elitcher to enlist him in espionage, and if you [fol. 2244] look through all that testimony as I did, you

will find one remark that Rosenberg is supposed to have made, one remark only: Sobell is also involved.

Now, that is a pretty crucial incident, isn't it, to get a man involved in espionage. If I were a conspirator, that would be the thing I would concentrate on first, getting a man in. And throughout that testimony the only words were, "Sobell is also in."

Now, let me tell you why I said I had my finger on it: just take out that line and there is no conspiracy on the part of Sobell. Take that out of there and there is no conspiracy. I am talking about up to that time.

Well, is it so hard, is it so hard for a liar and a perjurer to sit there? Is that so difficult? In your experience, have you found it so difficult for a liar and a perjurer to do that, and I am calling this fellow here, this mouse that was begotten by the lion, I am telling you that he is a liar and a perjurer. I don't take it back because he said so himself. And don't you let him take it back. Don't you let him protect his measley skin.

You heard me ask him on the witness stand, "Elitcher, you are scared to death right now, aren't you? And you have been scared to death all along?"

[fol. 2245] What morals? You remember Senator Tobey said so. What morals have we come to when we will endanger a man's life to protect our own measley little skins? Where are our morals? I refuse to believe that we are like that. I am not.

Just remove those two words "Sobell was also."

I even looked in that record, the sentence wasn't even completed.

I heard Manny Bloch say here to you, after I did comment, something that I was going to comment. If this is really true, Sobell has lived with the man.

Do you remember that testimony? Sobell lived with Elitcher in Washington. They had been friends for a long time. They saw each other. Their houses are back to back in Flushing. Rosenberg did not meet him for six years. All of a sudden he comes in and says, "Come on, help us to commit espionage," even though it might mean a death sentence.

Does that make sense? And if it were true, Sobell—

if it were true, and maybe conceivably it could be Rosenberg but he wouldn't come in the way this testimony shows. He would come in and say, "Look, you remember me, I am Rosenberg from City College."

"Oh, yes, I remember you."

[fol. 2246] "I come here because I was sent by Sobell, your very good friend."

That would be the kind of conversation there would be.

No, Rosenberg enlists him for espionage and mentions casually that Sobell is also—and, by the way, that is about where the sentence stops in the record.

Then I continued on—don't you remember I cross examined him? I said, "Did you get in touch with Sobell in any way to verify it?"

After all, here is a man, Rosenberg, comes in to you and tries to get you to commit espionage.

"Did he check with Sobell?" "No."

"Did you call him up? Did you write to him?" "No."

In September, three months later, they went on a vacation together anyhow. Sobell and his wife and Elitcher and his wife. And they were away for a week, and he said, "I mentioned it to Sobell," and he said, "Sobell became angry"—do your remember that?

Now if he had left it right there, if you had heard that testimony, "Sobell became angry," you would say to yourself right away, "Sobell is not part of a conspiracy."

[fol. 2247] No: the same as a few words were put in in June, a few words were put in on the vacation.

Now mind you, Sobell is supposed to be conspirator, and all the conversation for a full week that Elitcher gave you was, "Sobell became angry," and added the words "Julie," or "Rosenberg shouldn't have mentioned my name."

Now just figure that out.

Take that part out, take that part out and you still have no conspiracy.

Now that was the inspiration—not the inspiration, let us not call things by the wrong name. That is the only thing that I could put my finger on, to see, to try to analyze this man Elitcher, and I find that every spot—and I am not going to go over every one. In every spot—take out

a couple of words and you will see that Sobell was not a conspirator.

Again on page 358 I find this—now this I am going to be kind and charitable to Mr. Elitcher, and I am going to point my finger at this man (indicating Mr. Saypol), because that is all he is in this case, just like me; just as this man (indicating), as that man (indicating), that man is that man (indicating). He happens to be a lawyer with a Government job now, and that is all to me.

[fol. 2248] And when I see what is going on with some of our Government officials, please excuse me if I don't put a halo around him or anybody else, please excuse me; I have been living in this country too long to see what is going on.

Now, let us see what I mean, and I point the finger at Saypol.

There was testimony that Sobell had worked for General Electric for several years. After General Electric he came down to an important job at Reeves—always a Government worker.

And listen to this question, listen to it and tell me if this is poison or it isn't poison, if a man's life hangs on this or it doesn't. Just listen. This is a question asked of Elitcher: "Well, in the course of his duties"—oh, I am sorry, pardon me—"Q. In the time that you worked with Sobell at Reeves Instrument Company" and Elitcher also worked for Reeves for a while—"or at any time, did you ever see Sobell take any papers or documents?"

Now is this where a case of goods sold and delivered, and they asked that, it might not mean anything, but in a spy case a question like that means something. Isn't that the charge here? Stealing papers and documents.

Now, let us see what the answer is. This is Elitcher's [fol. 2249] answer, not mine: "Well, in the course of his duties I did, as far as I know, I saw him take—he had a briefcase and he did take things out of Reeves Instrument. I presume that they had to do with work. We had another installation at Roosevelt Field, Long Island, and he went out there quite often, and I know that he did have a briefcase and he took material out, but what it was, or what the material was, I do not know." And that is his answer.

Is that poison or isn't it?

Is that a poisonous question by Saypol, the man who is working for us, for me? Yes, for me.

I don't like that kind of stuff. I want to tell you that I am more concerned with the safety of our country than he is, because I tell you, ladies and gentlemen, you injure the liberty or life of one citizen and you wipe the foundation out of our country. We don't do things like that. We don't like them done. I don't like them done.

Of course he took documents. The man had an important job; going out to Roosevelt Air Field. His job was communication, as Elitcher said.

It had to do with air flight and so on.

What do you think he took out, postage stamps? The man was doing experimental work at Reeves. He had [fol. 2250] people under him.

Did you hear in this case one single solitary suspicion that Sobell took anything? Now, remember, remember he worked for G. E. for several years, important secret work. He worked for Reeves, important secret work.

Now I will tell you this, I will tell you this, I think that the Government can have an inference drawn against it—I withdraw the word "Government," I am sorry. I don't mean to use our Government in that way. I say that you can hold it against Saypol, that although he had on the list of witnesses person after person from Schenectady, General Electric, person after person from Reeves on the list, not one single one was brought, not one single one. I take that as a commendation of Sobell, and you have a right to do it, too. A man who worked for years for these two firms, all secret Government work, not a whisper of suspicion against him, not a thing outside of that physical creature, Elitcher, who was trying to save his own skin.

I don't know. Do you see now why I said that I witnessed the most amazing experience in my court period? I would be horrified, ladies and gentlemen, if this thing was a disorderly conduct case, I would be horrified. I am rendered —I have no words to express it, at that man's attempt to [fol. 2251] endanger somebody else.

Do you remember there was another time that Elitcher said Sobell became angry. That other time was in July,

1948. In July, 1948, Elitcher already was scared. He was scared to death. He knew that he had been caught up with on his perjury, and I am just telling you what I brought out here on cross examination, and you have a right to ask the Judge have read to you any of this testimony, and I fervently hope that during the course of the trial you will do that because you see we were mentioned three weeks ago. We were mentioned three weeks ago, and then you heard a mass of testimony since and nothing else about our being a conspirator, nothing else. So, for goodness' sake, if your memory is doubtful, have some of the minutes, some of the stuff read to you.

I urge upon you, have some of my cross-examination of Elitcher read to you. You know, I think that is what would show the story to be, the guy who was so scared that he noticed he was being trailed from Washington.

Now look, you go out for an automobile ride, you are not scared. You do not even look back to see if you are trailed. You wouldn't even know if you were trailed, but the man knew he was trailed.

[fol. 2252] What does that mean? It means that he was scared and he figured he would be trailed.

Where did he come to? He drove up to Sobell's house, you remember, in Flushing. He wanted to stay over with his wife and kids, and he came in and he said to Sobell, "I think I have been followed by the FBI."

And again Sobell became angry—do you remember that testimony? Sobell became angry. Now here again we have the same procedure; add a little to that and you have the picture.

Sobell became angry and told him, "Max, you shouldn't have come here. I have dangerous material."

What kind of a conspirator does that? If you had dangerous material in there, would you let Max Elitcher, a guy who has been stalling for years, according to his story, would you let him know about it?

But I brought out on cross-examination, I said, "Look Elitcher, at that time Sobell was doing important Government work, wasn't he, at Reeves?"

And he said "Yes."

Certainly Sobell was angry. Certainly he was angry.

Here is a man who brings the FBI to him so that he can be smeared with the smear of that fellow. You would be angry, too. Your whole job might be jeopardized. Why shouldn't he be angry, to slip in those few words to save [fol. 2253] his own skin? He became angry, he had dangerous material. Now, let's see what that dangerous material was. Did you hear what it was? Did you hear what it was? All he said was that he took a tin can that might have held film. For goodness' sakes, what kind of stuff was this? What is this that anybody could defend himself against?

I take out my wallet. It might have secret material. What kind of evidence is that? And those are the very words that Elitcher used, a can that might have contained film.

But to pin it home real strong he said, "Sobell said to me, 'I am tired. Will you go along with me to Rosenberg's house?' "

Do you remember that?

So I asked him, "You had just finished a trip from Washington. You were worried", and he answered, "Yes."

"You were tired."

"Yes."

"And Sobell asked you to go on with him? Did you drive?" I said, "How far is it from Flushing to Knickerbocker Village?" "Ten miles."

"And ten miles back."

And then I thought maybe the man—maybe the man [fol. 2254] by accident was telling the truth.

So I asked him, "Did you drive the car?" and he said, "No, Sobell drove it."

"Did you drive back?" "No, Sobell drove back."

Well, for goodness' sake, what kind of stuff is that? What is the Government—excuse me, what is Saypol handing you? On the basis of that he said to you, "We will convict this man under a statute that may take his life."

That is all in the evidence, it is all there written down for you to see, and that is what I went outside before to study, for a couple of other spots where his name was mentioned.

But if you do the same experiment that I did, cut out a couple of words, you will find that the whole thing is com-

pletely consonant with innocence, that Sobell had no part in such a thing.

I can tell you, that is where the poison slips in. Did he take any stuff from Reeves?

He said he was angry, "Rosenberg shouldn't have mentioned my name."

Stuff like that. Oh, now, now, we don't go for that sort of thing. That kind of stuff has been outlawed long ago. You try cases in a different way. You try cases now so as [fol. 2255] to arrive at the truth, not to besmirch people and not to save the skin of that miserable creature.

Is there one single solitary word that Sobell was involved with atom bomb secrets or the atom bomb dealings? Is there? Did Greenglass mention him?

And, by the way, it occurred to me, if he was a co-conspirator with Rosenberg, who was Greenglass's brother-in-law? Wouldn't Greenglass know him?

Did you hear a peep out of him from Greenglass's mouth or from Ruth Greenglass's mouth? Do you know now why Phillips and I couldn't understand what we need to answer? And I will tell you, ladies and gentlemen, and this I tell you solemnly without fear of any dispute, we don't have to answer a thing; we don't have to prove a thing and we don't have to disprove a thing. It is his job to prove that we are guilty. It is not our job to disprove it—remember that.

That kind of stuff coming out of a witness's mouth, a person like Elitcher—not with me, not with me, but then they brought in the killer-diller—the killer-diller. He was down in Mexico.

Well, let's see, let's see about that Mexican trip. I say that Sobell and his family went down to Mexico by airplane [fol. 2256] in his own name—how do you like that? I dare him deny that. I dare Saypol to deny that. And I am telling you that if they didn't know before they spoke to Danziger that Sobell went down to Mexico by air—if you remember the testimony of Bill Danziger, he told Saypol that the day that they left, that the Sobells left, he visited there to pick up some drill, and that they told him that they were going to Mexico by air line, so that at least—at least from the time that Saypol or his men spoke to Danziger, they knew that.

Any doubt about that?

Tell me, is it hard to find out if you take a trip to Mexico? I can probably find out in two hours if you took a trip to Mexico. You need a visa—that is the Mexican Consulate.

You go and buy an airplane ticket.

How many air lines are there to Mexico? I can find out in two hours without Mr. Norton and without Mr. Harrington and without Mr. Branigan—I could find out by myself.

I would send my clerk out and he will find out if you went to Mexico and if you went in your own name.

And I tell you, and I say I have a right to deduce that from the evidence that that is what happened. So up to [fol. 2257] that point there is no flight, is there, if I go to Mexico in my own name, with my family? Nothing wrong.

I would like to see Saypol try to stop me.

And when they got to Mexico—when they got to Mexico they took an apartment there. In whose name did they take the apartment? They brought a witness from Mexico, Manuel de Los Rios or something like that, and Mr. Cohn asked him, "Under what name did you know him?" or some words to that effect, and he said, "Sobell"—do you remember that? If you don't just ask for the testimony to be read to you.

Manuel de Los Rios' testimony is down here, it cannot be changed.

So they leave here for Mexico, in their own name, and they take an apartment in Mexico in their own name.

Now they put in a couple of flights to Tampico, Vera Cruz.

I don't care what kind of a brainstorm Sobell might have had. I don't care either if he had read in the newspapers something about Rosenberg or friends of his being involved. I don't care why. That is his own business. They could travel to Tampico and Vera Cruz under any name he wants, but he did not hide his identity because at the [fol. 2257a] time that he flew to Tampico and to Vera Cruz and back to Mexico City, Helen Sobell and the children were right in that apartment, and Manuel de Los Rios told you so, didn't he?

[fol. 2258] Do you remember that? He told you that. Because he received a letter and he said, "I went down to Mrs.

Sobell and gave it to her, because it was addressed 'Dear Helen.' "

Now, I am telling you, all right, if he had a brain-storm, whatever the reason was, that is not the case; because if he was trying to conceal himself, would he leave the facts in such a way that they can come right to him? Isn't that fair to assume?

But this wasn't Elitcher, this was Saypol; and I remember reading that he went down to Mexico himself, and I presume he went down to dig this up, and he dug up this poison. Why? Just take that out; take those two things out. You have no active conspiracy, have you? He was living there openly. And let me tell you, I dare say that Mr. Saypol, if he was serving us right, would have gone over to that house where the Sobells lived and found out, if I am telling you an untruth that they lived openly, in their own name. If Mr. Saypol was serving me right, he would have done that. I don't know whether he did that or not. I never asked him. But I tell you, have a right to say that when they bring Manuel de Rios up here to testify that that is the fact, that I have a right to assume it is a fact?

[fol. 2259] Now, will you tell me, if that is a conspiracy, God forgive us. I don't want any conspirators like that on behalf of our own country; I don't want any people helping out our country that way.

If that is a conspiracy, to take a visa from the Mexican Consulate, get on their air plane in their own name; take an apartment in their own name, stay there, I tell you, if that is concealment, you can have it.

I don't care why he went to Tampico under an assumed name and I don't care why he went to Vera Cruz. It is none of our business. I want to know, did he act in such a way as to conceal himself? I tell you, he did not. The same thing if you, Mr. Christie, live in the house where you do live and walk out and meet somebody and you give him a different name, but your house is there and you come back to that same house; is that concealment? I don't care what reason you had for giving the wrong name to the other person, I don't care. Maybe you had a brain-storm, maybe you had a reason, I don't care.

And then look, a little bit more poison——
Let's have 25, will you?

A little more poison. Do you remember Government's Exhibit 25? Well now, I don't care if he used Sobell's name, typewritten; gives his address, gives his occupa-
[fol. 2260] tion—you will have this, so you don't have to strain your eyes from where you are—and in a few spots, it has the handwriting of Mr. Huggins. I don't want to hurt Mr. Huggins. I suppose he does his job as best he can. But do you remember when I cross-examined him, was he telling you the full story? I asked him, he said he got all of this information, from the very beginning to the very end, from Sobell, while Sobell was sitting there.

Now, how do you explain then that "Sobell, Morton" is typewritten, and then right in the very same line, in Mr. Huggins' handwriting, "Wife—"accompanied by wife"; and then again, what did he do, take up his typewriter again and put in here "None—4/11/17, New York, N. Y."; and then put his typewriter down and pick up his pen and ask Sobell his age, "33"? I don't believe that. But that isn't important. The important thing I am getting at is, look at that notation at the bottom, in Huggins' handwriting, "Deported from Mexico." "Deported from Mexico." I thought maybe there was something to that, and I questioned him. Now, wait a second, just wait a second. Mexico, you know, is a civilized country. Mexico has a government; it has courts; it has Immigration officials; it has the same kind of people and the same kind of institutions that we
[fol. 2261] have. Do we deport anybody or prove deportation by having Mr. Saypol get on the stand and say, "From my observation he was deported from Mexico"?

Now, I didn't use those words. Huggins used the word; and that was another thing that I made sure of this morning; that was another thing I made sure this morning when I stayed outside; I wanted to look through some of his testimony. Is that the way anybody proves deportation? And Mr. Huggins sits there and says, from his observation he was deported; and Mr. Phillips at one time asked him a question, "Well, there are Mexican police or Mexican authorities there; did you ask them?" He said, "No." That

is in here. I didn't make it up. That is in here. He said, "No", and he kept on insisting it was from his own observation.

And this is my question: "And they told you some of the matters that is contained in this card; is that right?"—no, that is Mr. Phillips' question— "A. They didn't tell me anything that is contained on there, no, they didn't tell me anything that is contained on that card."

Now, that is Huggins' testimony, so we can take it, and it was correct.

Then we come over here, "Now, where did you get that information"—sorry—"Where did that information come [fol. 2262] from that counsel just has referred to?" And do you know whose question that was? That was Judge Kaufman's question, "Where did that information come from that counsel has just referred to?" He says, "That is something I put on there myself from observation."

What kind of poison is that? I mean, I make an observation that you are deported, you become deported. If Mr. Saypol could bring here an optician's clerk from Vera Cruz or Tampico, if that was the fact, let him bring the court record in. Why didn't he bring some official to say that was the fact? I say, that is in line with the kind of stuff that has been put in against us all the way through, and I don't like it. I don't mean that I have got to win every case I try. I do my best in every case. I try to protect the rights of my client and I do that in every case. Sometimes a jury disagrees with me, but it is my opinion. It is all right, next time I try a case the jury agrees with me, that is all right, too. I like it fair and square. I like it not with poison. I like it decent and honestly. I like it in the tradition that I was brought up in, in this country. I don't like questions like Saypol asks, I don't like questions like that, Saypol, "Did he take any documents from Reeves?" Why, of course he took documents from Reeves every day in the [fol. 2263] week, every day in the year that he worked there. What is wrong about that? What kind of poison is that?

The Court: May I say to the audience that they will have to desist from any further demonstration. Proceed.

Mr. Kuntz: And you and I have to watch out for these

things. I say every little citizen must be protected or we undermine the very foundations of our country.

I was born here. I love this country. I do not coddle with anybody that will attempt to injure, even if that person happens to enjoy the office of the United States Attorney and he uses methods that we don't like; we are going to tell him so. Because we can take care of our criminals with decent methods and decent procedure so that you and I are protected at the same time, because tomorrow, who knows, one of your Elitchers might get on and point the finger at you and just add a word here and add a word there to save maybe his own skin.

There is an awful lot that we can talk about especially after three weeks when the testimony was only in the first day. Remember that. Maybe I should have and I was prepared to read a great deal of this testimony, but I think [fol. 2264] that in my summarizing it, if you have any doubt that I told you what is in there, just check on me and have it read, particularly the answers he gave on cross-examination. Have it read. I have never, I have never in my life made a misstatement to any Court or jury. Never. If I can't win a case fair and square and I can't prove to you a defendant's innocence fair and square I don't want to prove it, and you will find everything I said is borne out by the testimony there. If you have any doubt about anything have it read back to you. You have a right after three weeks' time, you have a right to refresh your recollection if you desire.

Somehow I do feel inadequate. I feel inadequate in this case for this reason: When somebody charges you in an indictment with doing certain things, you go out and you prepare to oppose them. I am telling you if you hunt from top to bottom of this indictment you won't find in there a word about Morton Sobell outside of the title in this case and in the parts that I read to you and look at how many pages it is with overt acts and everything; not a word about Morton Sobell. And then bringing in a miserable creature like Elitcher, a miserable man, I tell you, to save his own skin.

Let me tell you ladies and gentlemen, Mort Sobell has [fol. 2265] walked with dignity all his life and he has

raised his family with dignity and I tell you no matter what happens here he will continue to walk with dignity. Then we will leave little miserable Elitcher to his own conscience.

The Court: Are you through, Mr. Kuntz?

Mr. Kuntz: Yes, sir.

The Court: We will recess, ladies and gentlemen, for lunch until 2:00.

(Recess to 2:00 P. M.)

[fol. 2266] AFTERNOON SESSION—2 P. M.

SUMMATION BY MR. SAYPOL

Mr. Saypol: May it please the Court, Mr. Foreman, ladies and gentlemen of the jury, throughout the three weeks we have been together in this courtroom, I have observed that each of you has displayed great interest and close attention as the evidence was unfolded here. For your courtesy, for your consideration my colleagues and I acknowledge our appreciation.

Having heard the evidence, you are now fully equipped to decide the issue which the Court is about to submit to you for your final determination. Both sides have had full opportunity to place before you all the relevant facts. The learned Court, the Honorable Judge Irving Kaufman, has presided with patience and fairness to all of us. He is the final judge of the law as it is to be applied in this case. You, however, ladies and gentlemen, are the final judges of the facts and the truth. This is in the highest tradition of American justice, a system of justice found nowhere else in the world. It is in marked contrast to the system which prevail in certain parts of the world where people have lost their freedom. It is appropriate at the moment, in my zeal for the proper administration of that system of justice, of [fol. 2267] which I speak with pride, to digress for just a moment, and I shall not take long to say something about a truly amazing thing—a truly amazing thing even for one who though perhaps with no gray hairs, has had experience of over twenty years in the courts, and as I shall show you

in a moment, my concern with that amazing thing is that it should not inflame you and accomplish that which I am sure was not intended. We who have worked in these courts know that lawyers for defendants pursue certain well-defined courses. If a defendant can prevail on the law, that is what his counsel does; he pursues the issues on the law. If the facts are with him, what else need he do but show the facts? But when the lawyer, when some kind of lawyer has neither facts nor law, they have a game that they call kicking the prosecutor around, and that is the amazing thing that you have seen here this morning.

That is so well known that our courts have had the occasions to discuss it, and this Court has said as follows about that practice:

"The attempt to turn this trial of men, whose guilt was abundantly proved, into a trial of Government's counsel, though a not infrequent expedient of defendants who have no other recourse, ought not, in our opinion, to succeed."

[fol. 2268] You have seen such attempts, first in the suggestion that the Federal Bureau of Investigation and my staff and I are silly dupes and we have been befogged, we have been fooled. All I need say about that at the moment, if it has anything to do with the case, after all, you are not judging Government's counsel; you are judging defendants on the basis of testimony. If there has been any fooling, you will remember that one of the defendants made blanket negatives, blanket answers, in denial as to whether she knew Harry Gold, as to whether she had ever talked to David Greenglass about his work at Los Alamos, as to whether she or her husband ever talked about atomic bombs, and yet I showed you that in the grand jury, on the advice of her counsel, she refused to answer those questions on the ground that to answer them would be self-incriminating.

In the grand jury:

"Did you ever know Harry Gold? A. I refuse to answer on the ground that it tends to incriminate me.

"Q. Did you consult your counsel, Mr. Bloch, before you made that answer? A. Yes."

I leave it to you as to who may have been fooled. The suggestion that the FBI has been duped? The FBI is never

duped. The FBI never prosecutes anybody. The FBI never makes any complaint against anybody. The activities of [fol. 2269] the FBI are confined solely and exclusively to gathering the evidence and submitting it to the prosecutor for his decision as to whether or not it warrants submission to the consideration of a grand jury, citizens like you, for their evaluation and for their conclusion as to whether or not there should be a prosecution, and if there be, in the form of an indictment, as you have one here.

Another counsel was more pointed in his attack. He and his colleague had something to say about—poisoning? I had not intended to say this, but it is in the law books, as expressed by the United States Supreme Court—as counsel said, that I was not his personal choice and in his eyes I met with disfavor, I say to you—and you will appreciate it when I have read to you this quotation from the Supreme Court—it is to maintain the privilege and the opportunity of people like that to say those things about people like me, that I will keep trying to do the job I am doing. My only fear is that in a case like this, your prejudices shouldn't be so aroused as to be exercised unfavorably toward the clients they represent. I beg you, judge them for the guilt, as charged in the indictment. Don't judge the defendants by their lawyers' bad taste or bad manners. That is not the thing I want you to do.

Mr. Justice Sutherland has said for the Supreme Court that the United States Attorney is a representative not of [fol. 2270] an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. As such he is in a peculiar, a very peculiar and a very definite sense the servant of the law, the two fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor, indeed he should do, but while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. And this I emphasize: It is fair to say that the average jury

in a greater or less degree has confidence that these obligations which so plainly rest upon the prosecuting attorney will be faithfully observed.

In the face of some of the accusations that have been made, I am completely at ease that you as a jury, even though I am not on trial, and you can't convict me or my colleagues, that you will be the best judges of whether the conduct of the prosecution here has been fair or not.

I was a little puzzled by the vitriol in the latter attack, [fol. 2271] and as I sat and reflected I sent for another law book and I find that in 1936 a lawyer by the name of Edward Kuntz was a candidate for election to the Court of General Sessions.

Mr. Kuntz: Wait a second. What has this got to do with this case?

The Court: No, let us not go into that.

Mr. Saypol: I think I have the right to explain the personal——

Mr. Kuntz: All right, I will let him state what I was a candidate for.

Mr. E. H. Bloch: If your Honor please, I may not have anything to do with this, but I believe any discussion about Edward Kuntz in any of his political ideas or candidacy might prejudice my client.

The Court: Excuse me, gentlemen. I would rather not have you go into it.

Mr. Kuntz: I am not worried about it.

The Court: I say I would rather not have him go into it.

Mr. Saypol: The most I shall say is that it appears to me that there may have been a motive to get even with me, but I emphasize, and I emphasize, and I beg of you, no matter how offensive that may have been to you, please do not fasten guilt for that intemperate, that improper attack on [fol. 2271a] these defendants, because if you do it will not be right.

Now, let us get on with light and without heat.

The grand jury for this Court has charged that these three defendants on trial before and several others, who were named with them but who are not on trial before you, were members of a conspiracy to commit espionage for the advantage of the Soviet Union.

[fol. 2272] The grand jury has charged that these three defendants and others agreed to communicate, deliver and transmit to the Soviet Union, documents, writings and sketches relating to various aspects of the national defense of the United States. I told you in my opening, and as you have seen and heard this case is one of the most important that has ever been submitted to a jury in this country. I feel most inadequate to express *to express* to you in words the enormity of the thing, but its seriousness and implications for all of us does not make it a complicated case. The issue here is a simple one. You must determine whether or not these defendants were parties to this conspiracy to transmit information to the Soviet Union.

A conspiracy, of course, is merely an agreement between two or more persons to violate some law of this country—in this case the Espionage law. The law actually need not be broken, as it was here. The agreement alone to break the law would be enough. Every person whom you should find entered into this agreement becomes guilty of the crime of conspiracy. If any one of the members of the conspiracy commits any overt acts, any physical act to further the objects of the conspiracy, all are guilty.

In this case if you find that the three defendants had [fol. 2273] become members of this conspiracy to commit espionage, they all become guilty as charged in the indictment.

If any one of them, Rosenberg, Mrs. Rosenberg or any one of the co-conspirators who are not on trial, commits any one act in furtherance of this conspiracy, such as meetings and conferences between any of the conspirators in furtherance of the conspiracy, such as trips made by any of the conspirators in furtherance of the conspiracy, like Harry Gold's trip to Albuquerque or Sobell's drive with Max Elitcher to Catherine Slip—any one such act by any conspirator supplies the requirements of the law as to all those who were members of this conspiracy.

In this case the grand jury has listed 12 overt acts by some of the defendants and some of the co-conspirators. The argument by the defendant Sobell that he is not mentioned in any overt act is specious and wholly without merit, and when the Court charges you on the law I am sure it will be amply demonstrated.

Why, for that matter neither is the defendant Yakovlev nor the co-conspirator Harry Gold named in any of the overt acts. The conspiracy law passed by Congress says clearly that the grand jury need charge and the Government need prove only one overt act by any of the members of a conspiracy.

[fol. 2274] The grand jury here, however, as I have told you, listed 12 of such acts by various of the co-defendants and the co-conspirators. We, as a matter of fact, have proven everyone of these described overt acts. As must be obvious, the Government has presented insurmountable evidence on literally each overt act, including overt acts by each and every one of the defendants and co-conspirators in this indictment, and the proof includes such activity by the defendant Sobell.

Let me say a little more on conspiracy. That means that the grand jury has charged that these people, the defendants and the co-conspirators, were all parties to an agreement with a common object: Despatching information vital to the national defense to the Soviet Union to be used to the advantage of the Soviet Union.

A conspiracy in operation, such as the conspiracy we have here, is in many ways familiar to the structure of a business enterprise, with a number of partners. All of the partners and employees of the firm do not do the same thing at the same time. While one partner talks to a customer, another may be negotiating with another prospect. While one employee is traveling, selling merchandise, so another employee may be in another city, buying merchandise, but the act of each partner and each employee is not an individual, isolated act performed only for the ben-fit of the [fol. 2275] actor. Each act by each party, by each employer in the course of business is an act performed for the benefit of the firm and for the benefit of his fellows.

Imagine a wheel. In the center of the wheel, Rosenberg, reaching out like the tentacles of an octopus.

Rosenberg to David Greenglass, Ethel Rosenberg, Ruth Greenglass; Rosenberg to Harry Gold; Rosenberg, Yakovlev. Information obtained, supplied. Rosenberg, Sobell, Elitcher —always the objective in the center coming from all the legs, all the tentacles going to the one center, solely for

the one object: The benefit of Soviet Russia. The sources, Government sources, Los Alamos, atomic information.

Sobell, Elitcher, information from the Navy, relating particularly to gunfire control; always secret, always classified, always of advantage to a foreign government.

Sometimes important developments in the business make it necessary for two or more of the partners—and you can think of them as Rosenberg or partners—make it necessary for two or more of the partners to put their heads together and work on a troublesome customer, or to try and sway an important prospect.

So, too, in this case when Elitcher made known his deci- [fol. 2276] sion to leave the Bureau of Ordnance in Washington and come to New York, Rosenberg and Sobell met together with Elitcher and jointly tried to persuade him to change his plans, to serve their interests in the common goal.

The evidence here has made it clear that each act by Sobell, and each act by Rosenberg and Mrs. Rosenberg, whether it be together or alone, was part and parcel of the one and the same conspiracy—a conspiracy, an agreement, an understanding on the part of all these people to the end that vital national defense information of this country should be furnished to the Soviet Union, and, further, that suitable recruits be obtained for this Soviet espionage ring.

This logic demonstrates the soundness of a Congressional determination that an act by any one of a co-conspirators be deemed the act of all of them. The one who committed the act was the agent, the representative of these partners in crime for that particular purpose.

All of that addressed to the straw man that has been set up that Sobell is not named in any of the overt acts. The plain and simple answer is that the grand jury doesn't have to do anything of the kind: having named them as defendants, it is for you as a trial jury to decide whether the conduct of a defendant, the conduct of his co-defendants, the [fol. 2277] evidence supplied to you by the witnesses has him in the conspiracy and makes him chargeable by you as a conspirator.

Let us now review the evidence in the case. It will be brief because you saw the witnesses, you heard them, you

examined the exhibits. Your recollection is the standard which will prevail. The association of Rosenberg and Sobell began at City College, and it continues until today. They have been held together by one common bond: Their mutual devotion to Communism and the Soviet Union, and their membership in this conspiracy to commit espionage for that Soviet Union. That is why their classmate, Max Elitcher, was asked to join the Young Communist League when they were at college. That is why Sobell recruited Elitcher into the Communist Party. That is why Sobell and Rosenberg joined in the concerted action to recruit Elitcher into their Soviet espionage ring.

[fol. 2278] While Sobell was chairman of his Communist Party unit in Washington, delivering to its members weekly directives concerning worship of the Soviet Union, Rosenberg was working his way up in the Communist Party underground. The significance of the relations of the membership in this Party, of their membership, the defendants' membership, conspirators' membership, their incidental allegiance to the Communist Party of the United States of America and the Communist National, is revealed in the testimony of Elizabeth Bentley.

There has been some suggestion here that she is a professional witness. At the time that Rosenberg told Sobell that he had had contact with Bentley, that she knew him; had telephoned to him as "Julie," was on the very day that she made a full disclosure, on July 30, 1948, before the United States Senate.

Mr. Phillips: Just a moment. I object to the United States Attorney saying "on the day Rosenberg telephoned"——

The Court: All right, your objection is noted. Be seated, Mr. Phillips.

Your recollection will govern, ladies and gentlemen, as to whether or not that is the fact.

Try not to interrupt, Mr. Phillips.

[fol. 2279] Mr. Phillips: Testimony——

The Court: Mr. Phillips, try not to interrupt. Will you please be seated?

Mr. Phillips: I haven't finished my objection, if your Honor please. May I say it?

The Court: I have your objection. The jury will determine whether or not it is on that day.

Mr. Phillips: That is not my objection. My objection is that the testimony is not that Rosenberg telephoned, but that somebody told somebody that Rosenberg telephoned.

The Court: Very well.

Mr. Phillips: There is a difference.

The Court: Your recollection, ladies and gentlemen, of what the testimony is will govern.

Mr. Saypol: May I proceed?

The Court: Please.

Mr. Saypol: You will recall that at that time there was no talk of writing books, of making lectures or these veiled insinuations about professional religionists. She made a disclosure to a legislative body of this country, and you may infer as to whether or not that wasn't the thing that made Rosenberg apprehensive about possible detection.

You saw her and heard her on the witness stand here. [fol. 2280] You are in a position to judge in the whole setting the substance of her narrative. She revealed the significance of membership in the Party, open membership and underground membership; the nature of its activities, including espionage in behalf of Soviet Russia; how it operated; how its contacts were established and maintained, always secret, always furtive, always to avoid detection.

Rosenberg told Elitcher at Manny Wolf's that night in 1948, just as Rosenberg and Ethel Rosenberg had told Ruth Greenglass that night in November, 1944, how he had realized the ambition of his life. He told them how he had gone from one Communist Party contact to another until he had achieved the coveted status of a Communist Party espionage agent. Rosenberg's Communist espionage superior in the early 1940s was Jacob Golos, a member of the Communist Control Commission in this country, one of the top Soviet espionage agents. During the time prior to Golos's death, when Golos was Rosenberg's Communist espionage superior, Rosenberg became known to Elizabeth Bentley, who had gone from membership in the Communist Party to a position of importance in Golos's espionage apparatus. At one time she rose in Party stature to the position of order-

ing Earl Browder around. We know this from her testimony in the courtroom.

[fol. 2281] We know of Golos's clandestine meeting, in which he received information from Julius, the engineer who lived in Knickerbocker Village. We know this from the telephone calls Miss Bentley received from this engineer, from Knickerbocker Village, Julius, as an intermediary, arranging clandestine meetings between Julius and Golos, his Communist espionage superior. But most important of all we know of Rosenberg's dealings with Bentley from Statements made by Rosenberg himself to Max Elitcher and David Greenglass.

It was on the night of July 30, 1948, when Miss Bentley's true identity and her espionage activities with Golos and other agents were on every front page in the country for the first time, Elitcher accompanied Sobell that night on this trip to Rosenberg's apartment to deliver material to Rosenberg. Rosenberg confided to Sobell on that night that he was the one who knew Golos, but expressed the hope that Miss Bentley might not be able to identify him. On another occasion Rosenberg admitted to David Greenglass, who does not know Elitcher and never had any connection with him, that he, Rosenberg, was the one who had dealt with Golos and was afraid that Miss Bentley might be able to identify him.

[fol. 2282] The last time Miss Bentley spoke to Julius was in November, 1943. We know that after the death of Golos Rosenberg continued his espionage activities. We do not know all of the details.

The identity of some of the other traitors who sold their country down the river along with Rosenberg and Sobell remains undisclosed. We know that such people exist because of Rosenberg's boasting to Greenglass of the extent of his espionage activities, how he had obtained information on the secret Government project concerning the Sky Platform, concerning the proximity fuse, scientific advances on atomic power for airplanes. There can be no question as to the secret, classified nature of this material, that was turned over. It is conceded that the atom bomb experiments and its development were vital to national defense. You heard it established as being of advantage to a foreign

power. You heard Dr. Koski's testimony in the course of Greenglass's testimony as to the significance of the lens mold experiments. You heard Mr. Deery, who testified in respect of Exhibit 8, the cross-section of the atom bomb itself, the Nagasaki bomb. You heard Colonel Landsdale who described the protective methods taken at Los Alamos, including secrecy.

These defendants were not dealing in public information or magazine articles. The testimony of the highly secret [fol. 2283] nature of the atom bomb material, of the classified nature of the work being done by Sobell at General Electric and at Reeves is established and uncontradicted.

There has been some argument here in the course of the defendants' summation with respect to those exhibits in evidence, the sketches of the lens mold, for instance, the sketch of the bomb, and a demand has been voiced, I take it, hardly serious, although highly vocal: where are those exhibits? Why aren't they produced here? Well, isn't it obvious having been delivered by Greenglass to Rosenberg, aren't the originals now in the place which Rosenberg or which the defendants intended, some place far away on the other side of the ocean behind the Iron Curtain? How could they possibly be here?

There is some suggestion that the Greenglasses have concocted this story. Couldn't they concoct it and produce exhibits and say, "These are the ones we made at the time. Some of them we kept"?

Talking about concoction, if there is concoction, why did the Greenglasses have to bring in Harry Gold about the $500.? The fact of the $500. is confirmed by the deposit in a bank in Albuquerque the day after the meeting was had. The only time the Greenglasses ever saw Harry Gold was on June 3, 1945, at Los Alamos, but if there was a con- [fol. 2284] cocted story, couldn't they have gotten together and said they got the $500. from Rosenberg? Where or why should they dig up a Gold?

We know of these other henchmen of Rosenberg in this plot by him, by Sobell, by the Soviet Union and its representatives and by other traitorous Americans to deliver the safeguards to our security into the hands of a power that would wipe us off the face of the earth and destroy its

peace. We don't know all the details, because the only living people who can supply the details are the defendants. Rosenberg and his wife have added the supreme touch to their betrayal of this country by taking the stand before you, by taking advantage of every legal opportunity that is afforded defendants, and then, by lying and lying and lying here, brazenly in an attempt to deceive you, to lie their way out of what they did.

I have said that there is much about this that we have not disclosed or that we do not know, but there is one part of the scheme that we do know about. You know about it because it was disclosed right before you. We know that these conspirators stole the most important scientific secrets ever known to mankind from this country and delivered them to the Soviet Union. We know that Julius Rosenberg and Ethel Rosenberg infected Ruth and David Greenglass with the poison of Communist ideology. We know that [fol. 2285] Julius Rosenberg and Ethel Rosenberg were engaged in a continuing campaign to enlist recruits for the Soviet cause through the Communist Party. And we know that in 1944 Julius and Ethel Rosenberg carried their campaign one step further and persuaded David Greenglass to steal atomic bomb secrets for the Rosenbergs to be turned over to the Soviet Union.

There is no condonation for the activities of the Greenglasses in 1944 and 1945. David Greenglass is a confessed member of the Rosenberg espionage ring. You heard his testimony and you observed him. You heard him confess his guilt. You heard him describe in detail his participation in this conspiracy. By his own plea of guilty, by his own voluntary act, without weaving a web of lies in an attempt to deceive you, he has made himself liable to the death penalty, too. The spurious defense that Greenglass, or the Greenglasses, in order to satisfy a business grudge, a business dispute against the Rosenbergs has concocted a story about espionage, making himself liable to the capital penalty by his plea of guilty because of the business disagreement, is as much of a concoction as the story of the defendants that Greenglass went to his worst enemy, Julius Rosenberg, for help when he wanted to flee the country.

Greenglass's relations toward his older sister, Ethel, and

[fol. 2286] her husband Julius were such that he was willing prey to their Communistic propaganda. He committed this crime because they persuaded him to do it.

The issue in this case, we are all agreed, transcends any family consideration; but clearly the breach of family loyalty is that of an older sister and brother-in-law dragging an American soldier into the sordid business of betraying his country for the ben-fit of the Soviet Union. The difference between the Greenglasses and the Rosenbergs? The Greenglasses have told the truth. They have tried to make amends for the hurt which has been done to our nation and to the world.

[fol. 2287] The Rosenbergs, on the other hand, have magnified their sins by their lying.

Further, Julius and Ethel Rosenberg sent Ruth Greenglass to Albuquerque, in November of 1944 to get the atom bomb information from David Greenglass. He came to New York on a furlough in January, 1945. It was on that furlough that Rosenberg received the first sketches of a high explosive lens. It was on that furlough that the descriptive material was given to Mrs. Rosenberg to be typed up. It was during that furlough that Rosenberg took David to be pumped for further secret information on the high explosive lens by another Russian spy in the car here in midtown Manhattan.

It was during that furlough that the Rosenbergs had David and Ruth at their home and displayed to them Ann Sidorovich, who was the Soviet agent, scheduled to make the trip to Albuquerque to collect more atom bomb information from David.

A query has been thrust at me from you: Where is Ann Sidorovich? They know why I can't say, but I say Ann Sidorovich was their friend. I ask where is Ann Sidorovich? So far as I know she is still their friend. It was on that very night the plans were formulated even to the extent that in execution, consideration was given to the probability that perhaps Ann Sidorovich might not be available and [fol. 2288] that a different agent might have to be sent ultimately to Albuquerque. That is when, in the words of Julius Rosenberg the simplest things are the best. The irregular Jello box cover is cut. One piece went to Mrs.

Greenglass, and the other was last seen by both of them in the possession of Julius Rosenberg that night.

Recalling the expression, "The simplest things are best", the simplest way, the way perhaps least possible for detection when it came to passport photographs was to go right behind this building, right under the FBI, to get the pictures taken. It is literally true—of course it was on the demand of the defendant that the information was elicited. That evidence was testified to here by the witness Schneider, was not obtained until almost the very moment that it was laid open before you.

Mr. Bloch had a lot of things to say about Greenglass. Ladies and gentlemen, the greetings from Julius, the delivery of this piece of cardboard cut by Julius Rosenberg, given to Harry Gold by the Soviet Vice Consul, Yakovlev, does not come to you from Greenglass alone. Every word that David and Ruth Greenglass spoke on this stand about that incident was corroborated by Harry Gold, a man whom they had never seen before this day in June 1945, and a man they never saw again from that day until this con- [fol. 2289] spiracy was ended.

The history of this Jello box side, the greetings from Julius and Greenglass's whereabouts in Albuquerque come to us not only from Ruth and David, but from Harry Gold in this courtroom—a man concerning whom there cannot even be a suggestion of motive because, as far as he is concerned, the die has already been cast. The charges against him have already been disposed of. He has been sentenced to thirty years, the maximum term of imprisonment. He can gain nothing from testifying as he did in this courtroom except the initial relief, the moral satisfaction in his soul of having told the truth and tried to make amends. Harry Gold, who furnished the absolute corroboration of the testimony of the Greenglasses, forged the necessary link in the chain that points indisputably to the guilt of the Rosenbergs.

Not one question was asked of him by any defendant on cross-examination. It was so obvious to everyone in this courtroom that he was telling the complete truth when he

described his trip to Greenglass, after having substituted for a woman espionage courier who was supposed to go.

We know who that woman was. She was Ann Sidorovich, whom Julius and Ethel Rosenberg had at their home that night in January of 1945 when the Greenglasses were there. [fol. 2290] Not a question was asked of Harry Gold, who received this piece of cardboard that went from the hands of Rosenberg into the hands of his partner in Soviet espionage, the fugitive defendant Anatoli Yakovlev.

The atom bomb secrets stolen by Greenglass at the instigation of the Rosenbergs were delivered by Harry Gold right into the hands of an official representative of the Soviet Union. The veracity of David and Ruth Greenglass and of Harry Gold is established by documentary evidence and connot be contradicted.

You have in evidence before you the registration card from the Hotel Hilton in Albuquerque, which shows that he was registered there on June 3, 1945. You have before you the transcript of the record of the Albuquerque Bank showing that on the morning of June 4, 1945, Ruth Greenglass opened a bank account in Albuquerque and made an initial deposit of $400. in cash—just as she and David testified they did here on the witness stand right before you.

Ann Sidorovich did not go to Albuquerque to get this atom bomb information for Rosenberg and the Soviet Union. Harry Gold did, and Harry Gold went on the orders of his Soviet espionage superior, the defendant Anatoli Yakovlev, the Soviet Vice Consul in New York.

Exhibit 4-B, the other part of this Jello box, last seen in [fol. 2291] Rosenberg's hands, next appeared in the hands of Soviet official Yakovlev. He handed that recognition signal to Harry Gold. He gave Harry Gold the address in Albuquerque, to Rosenberg's brother-in-law, David Greenglass. He told Harry Gold to bring Greenglass greetings from Julius. Gold made the visit to Albuquerque, as we have seen, on June 3, 1945. He brought the greetings from Julius to David. He carried the piece of the Jello box that Julius Rosenberg had kept in the first instance. On that Sunday in June, Gold told you that he gave Greenglass $500. in an envelope. Gold received and delivered the atom

bomb information from Greenglass alone with other information he had obtained from Dr. Klaus Fuchs on the same trip to his Soviet superior, Yakovlev.

On David's September furlough Rosenberg got from him the cross-section sketch of the atom bomb itself and a 12-page description of this vital weapon. This description of the atom bomb, destined for delivery to the Soviet Union, was typed up by the defendant Ethel Rosenberg that afternoon at her apartment at 10 Monroe Street. Just so had she on countless other occasions sat at that typewriter and struck the keys, blow by blow, against her own country in the interests of the Soviets.

In February of 1950, Dr. Fuchs was arrested. He con- [fol. 2292] fessed his activities as a spy for the Soviet Union. You have heard of the part that he performed while he was at Los Alamos.

Rosenberg's position in the Soviet espionage hierarchy in this country was such that he knew that on that trip out West to see Greenglass, Harry Gold was the one that had also collected information at the same time on the atom bomb from Dr. Fuchs.

Rosenberg knew that when Dr. Fuchs disclosed to the authorities what had happened, that he must identify Harry Gold as the espionage agent who had come to him in New Mexico. Rosenberg knew that Harry Gold had dealt also at some time with David Greenglass. Rosenberg knew that David Greenglass had been recruited into this espionage work by himself and his wife. That is when Rosenberg hurried to Greenglass to convey to him the necessity, the urgency of getting out of the country, and when Greenglass first looked at Harry Gold's picture in the newspaper in Rosenberg's hands, he and his wife didn't recognize him immediately as the same man whom they had seen on but this single occasion, who had come to them in Albuquerque on Sunday, June 3, 1945.

[fol. 2293] Anyone might hesitate before positively identifying such a picture of one whom one hadn't seen but briefly five years before. But while Greenglass had his doubts, Rosenberg had none. If Greenglass was falsifying, couldn't he have said he recognized the picture right away? Who could contradict that? Rosenberg knew that Harry

Gold was the man who went to get the atom bomb information from Greenglass. He knew that because he had arranged to send him. Rosenberg knew that because he had gotten that Jello box piece and the instructions into the hands of Yakovlev for delivery to Harry Gold. Rosenberg's prediction that when it reached, and when the disclosures came, there would come a time that Gold might point to Greenglass, that prediction eventuated, and in May, Harry Gold was arrested.

It now became even more urgent for Greenglass to flee the country, in fact, to be chased out of the country. The truth was beginning to catch up with the Rosenbergs and their crowd. The passport photos of the Greenglass family were taken at Rosenberg's insistence. Rosenberg asked for five sets, but Greenglass had six sets taken. The five sets are now undoubtedly in the hands of Rosenberg's Soviet partners, but the sixth set is here, in this courtroom, before you as Government's Exhibits 9-A and 9-B.

[fol. 2294] You heard Mr. Schneider testify that for passport purposes three sets were required. Those of you who have had experience with passports know that when families travel in a group pictures are required of a parent or the parents and children who are traveling with them, and yet one might ask, "Why is more than one set of three pictures necessary?" The answer to that lies in the fact — and you may infer it — that in order to make possible this skipping furtively from country to country, forged and false passports are necessary, and perhaps in perpetrating a forgery, a false passport, mistakes might be made, pictures might be mutilated, different passports might be required, depending on the route to be taken, the most felicitous route, one indicating the least possible likelihood of detection, and that is why I suggest you may infer more than the usual number is taken.

Rosenberg gave Greenglass $1,000, and later $4,000, wrapped in this very piece of brown paper here in evidence before you, Government's Exhibit 10. Greenglass gave this money to Louis Abel and asked Abel to hide it for him. Abel hid it and it remained in Abel's hassock to June 16, 1950, when it was turned over to Greenglass's attorney. That piece of paper was identified here by Abel, before

that by Greenglass, and after that by Mrs. Pagano, in the [fol. 2295] lawyer's office, who actually had it delivered to him by Abel.

Where did Rosenberg get this $4,000.? Certainly it is evident that Greenglass never had that much, and it appears that Rosenberg never could have had that much.

The Court: Mr. Saypol, you have a half hour.

Mr. Saypol: Yes, thank you.

He admitted on the stand that he did not have it any more than he had the other moneys he paid Greenglass during this conspiracy. He didn't have that money any more than Harry Gold had the $500. he gave to Greenglass in June of 1945, which was deposited in the Albuquerque Bank. All of that money came from the same source, delivered in cash, from the Soviet Union, an investment which paid handsome dividends to the Soviet Union at a cost to this country, the extent of which must be measured in lives more than in money.

When Rosenberg gave Greenglass the money, he told him to flee to safety by going from this country to Mexico, from where he would eventually embark for Europe, from the Mexican seaport of Vera Cruz. It was after that that Ethel Rosenberg, laden with gifts, went to Ruth Greenglass and asked for assurance that David wouldn't talk so that the truth of the Rosenbergs' treachery and disloyalty would [fol. 2296] not be discovered, so that the Rosenbergs could continue to serve their master, the Soviet Union.

Added to the testimony of the two Greenglasses, Max Elitcher, the testimony of Harry Gold, the registration card, the bank account, the Jello box, you have the testimony of Ruth Greenglass's young sister, Dorothy, who told you how Julius Rosenberg chased her into the bathroom, behind closed doors, so that he could talk to Ruth Greenglass alone. You have the testimony of Dr. Bernhardt about Rosenberg's inquiry concerning vaccination for a veteran who was going to Mexico. The testimony of these witnesses prove beyond any doubt the verity of what the Greenglasses have sworn to in this courtroom.

The Rosenbergs knew that their glib denials on the witness stand could never overcome this corroboration. So Rosenberg decided to admit these two incidents—and what

was his explanation? Yes, he had told Dorothy to leave the room so he could talk to Ruth alone. The reason was that he could hear Ruth tell him that David might do something wrong by taking something or other from the project at which he was working, and so Julius could tell Ruth, David above all, should be sure not to do anything wrong. [fol. 2297] We know what Julius Rosenberg told Ruth Greenglass on that occasion and what he and his wife told Ruth and David on every occasion when they were together. The Rosenbergs told them to go and commit espionage in the interests of communism in the Soviet Union, just as Rosenberg and Sobell told that to Elitcher and countless others, and that is what happened.

As to the Dr. Bernhardt incident, Rosenberg had to admit that, too, because he knew that no one would take his word against that of a doctor, who obviously has no interest in the outcome of this case. As his explanation for this incident Rosenberg asks you to believe the story of how his mortal enemy, David Greenglass, who was out to get even with him, selected Julius Rosenberg, out of all the friends and relatives he has in the world, and Rosenberg asks you to believe that the help Greenglass wanted was $2,000. in cash, so that he could go to Mexico, or in the alternative, a doctor's certificate concerning smallpox vaccination. Perhaps it is that explanation of the defendants here that requires vaccination.

It was around this time that Rosenberg described for us the scene in which Greenglass made an urgent phone call to him, as a result of which Rosenberg dropped [fol. 2298] everything and rushed over to meet Greenglass at Greenglass's request, I think a day or two or three days later, only to be told that Greenglass had company and that Rosenberg should come back some other time; and Rosenberg admits that in spite of this hatred for Greenglass they were walking together late in May, 1950. He admits that because he heard Greenglass testify on the stand that during this walk they ran into the Einsohns, two friends of the Greenglasses. That meant to Rosenberg two more living people to give him the lie, if he should deny that this incident happened.

You heard the Rosenbergs testify here. You heard how

anxious they were to help this country by telling the truth about their activities. You heard them tell about the $21. console table. You heard the testimony about what was done to that console table, so that it was used for microfilming. How strange, on the one hand, the testimony from the Greenglasses that that was a present from the Soviet, the testimony from the Rosenbergs that they paid $21. for it in 1944 and 1945, when furniture was scarce, at Macy's; that it was delivered; and then a disinterested woman, even in the face of adroit cross-examination, resolute in her determination to tell the truth, telling the truth, she saw [fol. 2299] the table. Mrs. Rosenberg said it was a wedding present from a friend of Julius or her husband, whom they hadn't seen for many years, and this remarkably strange behavior taking the best piece of furniture in the house and storing it in the closet—why did they have to hide it? The source was from a friend, a friend with whom they had been working for ten years, in a type of activity which was perilous to the welfare of our country.

You heard Greenglass testify that just as he was ordered to leave the country by Rosenberg and just as Joel Barr fled the country, Rosenberg and his family were also prepared to flee the United States and seek refuge behind the iron curtain. You heard Ethel Rosenberg swear before you only yesterday that she and Julius and their children did not have passport pictures taken at that time; they never had passport pictures taken, she said. To admit that would be to admit the preparation for flight as Soviet espionage agents, for an ultimate destination behind the iron curtain.

Yesterday you heard Mr. Schneider identify both of them as those who had come to him at his place of business on a Saturday in the middle of June, 1950 with their children. He told us nothing of snapshots, taken for amusement of [fol. 2300] precocious children. He told us of an order for three dozen passport photos for Julius and Ethel Rosenberg and their family, who told him that they were going to Europe, to France.

There was some suggestion about the absence of the negatives. You saw the photographs of Schneider's place. His place is right back of the courthouse. His specialty is

making chauffeur's photographs, photographs of police licenses, for engineers' licenses, the little things that cost three for a dollar; you go in and you get them; usually the photographer has an old box that serves as a camera; the pictures are never very good, but they serve the purpose, and I doubt that they ever have a repeat order, and the negatives never survive the day; and that is the only reason why there are no negatives here. This wasn't artistic photography, requiring long and patient sitting with retakes. They were passport pictures, usual rate, three for a dollar. This order, the largest he probably had in a long time, nine dollars in one day, on a Saturday when he wasn't doing business.

There you have the contrast between the disinterested, truthful witnesses and the Rosenbergs, with a positive motive for deception and lying.

[fol. 2300a]As, of course, is the invariable procedure in cases of this kind, counsel for the Rosenbergs and Sobell had bitterly attacked many of the Government's witnesses. Some of these witnesses were involved with these defendants in this conspiracy; some were involved with these defendants in communist activities.

[fol. 2301] But it is these very witnesses whom they now attack that they themselves chose as their partners in crime. While Rosenberg attacks the Greenglasses today, seven years ago it was the Rosenbergs who took this same David Greenglass and set him to betraying his country. It was Sobell at Rosenberg's instigation who recruited Elitcher. The only ones with knowledge about the activities of these defendants are those who participated in the same activities. These witnesses were not your choice, nor were they mine, these witnesses, Elitcher and the Greenglasses. They were selected by these defendants as their associates and partners in crime.

As you have seen and heard, we have not only the testimony of Ruth and David Greenglass about Rosenberg's espionage activities. We have Elitcher's, a man who never saw Ruth and David Greenglass or Harry Gold. Elitcher has placed the brand of Soviet spy on Rosenberg. You have the documentary evidence of Gold's registration card, the bank account, the wrapping paper, the testimony of Dr.

Bernhardt, Dorothy Abel, Evelyn Cox, of Schneider, who took the passport pictures. That is why the evidence as to the Rosenbergs' guilt is incontrovertible.

Their guilt is established by the proof not beyond a reasonable doubt, but beyond any conceivable doubt.

[fol. 2302] As his Honor will undoubtedly charge you as to the defendant Morton Sobell, that once the proof has been shown that he was a member of this enterprise, then he becomes bound by the acts of his co-conspirators—of Julius Rosenberg and Ethel Rosenberg and the others—even though he may not personally have participated in each of these acts. That is so because they were all members of the team. The one common purpose which bound them in all their activities was to aid the Soviet Union.

What is the evidence of Sobell's participation here? The evidence is that Sobell had been an associate of Rosenberg since City College days. They were joined by the common bond of communism and devotion to the Soviet Union. The evidence is that Sobell acted with Rosenberg in this conspiracy to commit espionage for the Soviet Union by delivering material to Rosenberg and by fulfilling Rosenberg's orders to recruit Max Elitcher and others into this Soviet espionage ring.

The testimony is that in the same month that Greenglass was paid by the Russians through Rosenberg to flee the country to Mexico, and in the same month that the Rosenberg family got its passport photograph, in that very month Sobell and his family did in fact flee to Mexico where [fol. 2303] Sobell went to the airport of Vera Cruz, just as Greenglass had been instructed to do, and to the second airport at Tampico, and he went there under not one but under a string of aliases, using people in New York and in New Mexico as mail drops, exhibiting the conduct that fits in the pattern of only one thing—membership in this conspiracy to commit espionage for the Soviet Union and flight from an American jury when the day of reckoning had come.

You have had in evidence before you Exhibits 22-A and 23-A, which are registration cards for Sobell under fictitious names in Vera Cruz and in Tampico. Aside from the fictitious names which I purposely refrain from calling

to your attention, you will now notice that on each of the cards he gave a different address, equally fictitious, in Philadelphia. If he was not running away from anything why did he have to go under a false name and give a false address in Philadelphia?

First you have the testimony of Elitcher as to Sobell. Mr. Kuntz had a lot to say about Elitcher. Once again Elitcher was picked by Sobell. He wasn't picked by me or by you. He was his best friend. Elitcher knows the truth about Sobell's participation in this conspiracy to commit espionage because Sobell tried to pull Elitcher into these espionage activities along with him. Elitcher is one of [fol. 2304] the few who knows the true nature of Sobell's activities and he has told us of them. The others who know are the Rosenbergs. One can see the chance of having them tell us about it. The cost of the truth and his testimony to Elitcher was the ruination of his reputation. He lost his job. He has admitted he had been a Communist and that he had been recruited into this Soviet espionage ring by Sobell and by Rosenberg. This argument about a possible perjury charge against Elitcher, just like the argument about Ruth Greenglass being out of jail, are invariable and inevitable arguments of counsel when they are overwhelmed and when the evidence is devastating against their client, to attempt to confuse an issue, build up straw men. They know as well as we do that the conclusion of the grand jury as to the other defendants and other cases is the prerogative of the grand jury and is foreign to the single issue in this case, as foreign as what I have suggested before, as the diversionary attack, for instance, on the prosecutor.

These defendants seek to escape the consequences of their own acts by hiding behind straw men like that. Greenglass is a confessed spy and Elitcher has admitted that some years ago he did not disclose his Communist Party membership in an application; but these men under the [fol. 2305] greatest stress have stood up here and disclosed the truth about their past activities—the truth established beyond any doubt by independent, uncontradicted and corroborated evidence. Unlike the defendants on trial, these witnesses have come forward and told the truth.

They have not compounded their sins by trying to lie to you here in this courtroom. The question here is not the fate, present or future, of other people. The question here is the guilt of these three defendants named by the grand jury here on trial before you in this courtroom. That is the single issue and the evidence on that issue is overwhelming.

In the face of the testimony of the Greenglasses, of Gold, of Elitcher, and the documentary proof and testimony of disinterested witnesses, all corroborated, all that the defense has offered is the testimony of Ethel and Julius Rosenberg, who plainly have the greatest motive in the world for lying, and just as plainly lied throughout before you.

Concerning Morton Sobell, it was Sobell at college along with Rosenberg who recruited Elitcher into the Young Communist League. When Sobell joined Elitcher in Washington when both worked for the Ordnance Branch of the Navy Department, it was Sobell again who recruited Elitcher into the Communist Party, it was Sobell who was [fol. 2306] chairman of the Communist Party cell. It was Sobell who was chairman of the cell, who imparted orders from the Communist Party to the Government employees who belonged to the cell, the doctrine of worship and service of the Soviet Union. This testimony is uncontradicted. Elitcher was unaware of all the details of friendship through the years between Rosenberg and Sobell. Elitcher does not know the details of the relationship between Rosenberg and Sobell except as it affected him personally, but we know of that relationship from the mouth of Rosenberg himself, who admitted his association with Sobell. It would require but little mental effort on the part of any of us to figure out how Rosenberg happened to approach Elitcher to invite him into Soviet espionage in June, 1944. Sobell, Rosenberg's friend, was the one who had recruited Elitcher into the Communist Party. It was Sobell who thought that Elitcher was right for recruitment into Soviet espionage. It was Sobell who knew Elitcher was in the very status that Sobell described to Elitcher in later years, as in the perfect position for enlistment into Soviet espionage. That was why Sobell's friend, Rosenberg, in 1944 went to Washington to see Max Elitcher,

a classmate he hardly knew at school, and whom he had seen for exactly 30 seconds or one minute in six years at a swimming pool since they left school. It requires hardly [fol. 2306a] any imagination to find that Sobell sent Rosenberg to see Elitcher on that occasion, but even this little effort need not be extended.

On that visit in June 1944 you will remember Rosenberg told Elitcher that Morton Sobell was "in this thing" with Rosenberg. This is the visit which Rosenberg says resulted from his thumbing through the telephone directory when he was in Washington.

[fol. 2307] Sobell at the time was in Schenectady working at the General Electric Company on secret Government projects. The next time——

The Court: Mr. Saypol, 10 minutes.

The Saypol: Will you allow me to take two or three more?

The Court: Go ahead.

Mr. Saypol: I will try to rush it.

It was then that Elitcher told Sobell of Rosenberg's visit and of Rosenberg's attempt to assure Elitcher to enter the espionage ring by disclosing that their good mutual friend, Morton Sobell, was already in it with Rosenberg. It was on this occasion that Sobell was vexed to know that Rosenberg had revealed to Elitcher that Sobell was engaged in Soviet espionage. He retorted that Rosenberg should have more sense than to go around talking about that.

What did Sobell do on being told by Elitcher that their friend Rosenberg had named Sobell as a member of the Soviet espionage ring? Did he denounce the revelation as a lie and deny his participation? No, he didn't deny the truth to hs friend. His only reaction was that there was too much loose talk about his being a member of the espionage ring. He objected to the notoriety about that activity in this country.

[fol. 2308] You, of course, remember the testimony how Sobell joined Rosenberg in efforts to establish Elitcher as an active and useful source of information to the Soviet espionage ring; how on Elitcher's visits to Schenectady Sobell pumped him for information concerning the new secret program of the Government for gun-fire control on our war weapons; how when he drew from Elitcher the ad-

mission that this secret program would be described in writing in the near future, Sobell instructed Elitcher to go at once to Rosenberg and tell him that his material was in preparation and might be available; how Elitcher in fact did go to Rosenberg and tell him that.

You will remember how one of the top projects on Rosenberg's list was the problem of recruiting more communists and people whose ideology was such that they were ripe for invitation to enter Soviet espionage.

So, too, Sobell on at least two occasions pressed Elitcher for names of engineers, not for business but engineers with the proper progressive views who would be good prospects. Of course, they had to be in the first instance identified with communism. Later on, when the chance of detection became more likely, he said it was important that they should not have been identified with any communistic activities. [fol. 2309] There came a time when Elitcher decided to leave the Bureau of Ordnance in Washington—apparently when Sobell and Rosenberg had made a request of Elitcher which necessitated his remaining in Government. When Elitcher called Sobell and told him of his decision, he had to meet Rosenberg and talk to him about it first, and they tried to dissuade him. You will remember the meeting which resulted in dinner at Manny Wolf's.

Elitcher did, and finally changed his mind, on July 30, 1948, and came to New York. He stayed at Sobell's house. He disclosed to Sobell that they had been followed from Washington. Sobell was alarmed—alarmed because, in his words, he had some very valuable material, so much so that that night they had to go down to 10 Monroe Street to deliver it to Rosenberg even at the risk of detection by the FBI. And that, you will remember, was the same day that the Bentley story came out, and that was the day when there was some mention by Rosenberg of the fact that he had some relations in espionage with Miss Bentley.

When William Danziger, a classmate of Rosenberg and Sobell, went to see Sobell in the late spring of 1950, last year, and told Sobell what business he was in, Sobell furnished Danziger with the business address of Sobell's friend, Julius Rosenberg, and suggested that Danziger go [fol. 2310] to see him. Danziger did go to see Rosenberg.

He spoke with him. He told him that he had come from Sobell. He saw Rosenberg again before his arrest. He wanted to give Rosenberg some business but Rosenberg wouldn't take it, telling Danziger that he was too busy. This was significant, because Rosenberg on this witness stand has made protestations of poverty and told us how bad business was and how he could not eke out an existence, no less lend money to David Greenglass. But Rosenberg was too busy to accept an order from Danziger.

We know why he was busy—too busy trying to keep two steps ahead of the FBI; financing flight of other members of the ring and making his own plans to flee.

You have heard the details, the instructions of Greenglass to get to Mexico and out of Mexico, and finally behind the Iron Curtain—the statues, the three-day waits, the signals and so on.

Just after Greenglass's arrest in June of 1950, Sobell fled. He was running away from the authorities and the United States. He told such a story to this man Rios from Mexico in a slightly different way, that he had seen one war when in fact you know from his draft documents he was never in the Army. He was afraid of the draft, [fol. 2311] and yet he was too old now—he was over 26—to be drafted again.

He did tell Rios that he was fleeing but he did not tell him the real reason. And the other facts, the concealment of names and the concealment of addresses are enough to indicate the real reason for flight.

You have heard from Danziger, how Sobell used him as a mail drop, sending letters here for ultimate transmission to members of his family. You have heard that from Mr. Rios, how letters came to him from Sobell in Tampico and Vera Cruz. When he opened the mail, it was intended for Sobell's wife.

The FBI caught up with him and brought him back, and you have him here.

You cannot determine the guilt of Sobell any more than you can of the other defendants by any ingenious arguments of counsel.

The uncontradicted evidence of Sobell's espionage activities, of his meetings with Elitcher, of the trip to deliver the

can of film to Rosenberg, of the flight to Mexico using at least five different aliases, combine to make the uncontradicted proof of Sobell's guilt overwhelming.

Ladies and gentlemen, you have heard statements of defense counsel here concerning the injection of communism [fol. 2312] in this case. I repeat again, these defendants are not on trial for being communists. I don't want you to convict them merely because of their communist activity.

Communism, as the testimony has demonstrated, has a very definite place in this case because it is the communist ideology which teaches worship and devotion to the Soviet Union over our own government. It has provided the motive and inspiration for these people to do the terrible things which have been proven against them. It is this adherence and devotion which makes clear their intent and motivation in carrying out this conspiracy to commit espionage.

We ask you to sustain the charge of the grand jury in a verdict of guilty against each of these three defendants, on one basis and one basis alone: the evidence produced in this courtroom as to their guilt of the crime of conspiracy to commit espionage; that proof as to each defendant has been overwhelming. The guilt of each one has been established beyond any peradventure of doubt.

The crime charged here is one of the most serious that could be committed against the United States of America. These defendants before you are parties to an agreement to spy and steal from their own country, to serve the interests of a foreign power which today seeks to wipe [fol. 2313] us off the face of the earth. It would use the produce of these defendants, the information received through them, from these traitors, to destroy Americans and the people of the United Nations.

These three defendants stand before you in the face of overwhelming proof of this terrible disloyalty, proof which transcends any emotional consideration which must eliminate any consideration of sympathy.

No defendants ever stood before the bar of American justice less deserving of sympathy than these three.

I am a firm believer in the American jury system. I have confidence in the perception of a jury of 12 intelligent American citizens.

I am confident that you will render the only verdict possible on the evidence presented before you in this courtroom—that of guilty as charged by the grand jury as to each of these three defendants.

The Court: We will take a short recess.

(Short recess.)

The Clerk: The Court is about to charge the jury. All persons wishing to leave the courtroom should do so now, as no one will be permitted to leave until the Court has finished his charge.

[fol. 2314] DEFENDANTS' REQUESTS TO CHARGE

1. I charge you that you, and you alone, are the sole judges of the facts in this case, and it is your duty under your oaths as jurors to fulfill this duty in arriving at your verdict in this case. You are not to be influenced in this case, so far as the facts are concerned, by anything except the evidence adduced in the course of the trial. I particularly caution you that anything said by the Court in his instructions is said to you for the purpose only of giving you instructions as to the law in the case. If you should be under the impression after hearing these instructions as to the law, that the Court has indicated the weight or purport of certain facts in evidence then you are not to follow the impression thus conveyed and you need pay no attention thereto, unless and only if it agrees with your own independent judgment based upon the evidence in this case.

2. I charge you that the action of the Court during the course of this trial in passing upon or in overruling objections made on behalf of the defendants, or in sustaining objections made by the prosecution are not to be taken by you as any indication of the guilt or innocence of the defendants. Counsel for the defendants not only has the right, but is charged with the positive duty of objecting [fol. 2315] to the introduction into evidence of any testimony or exhibit offered by the prosecution which such counsel for the defendants believes, under the rules of evidence, should not be admitted. Such matters are merely matters of procedure with which you have no concern and

which should not influence you in arriving at your verdict.

3. I charge you that the indictment on file herein is a mere charge or accusation against the defendants. It is merely the means of bringing the defendants to trial. It is not any evidence of the defendants' guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendants because of or on account of such indictment.

4. I charge you that, as a matter of law, the Government occupies no different or higher position than any other litigant. I charge you, therefore, that you must not be influenced in your consideration of the evidence in this case by the fact that the Government of the United States is a party to this action. The Government is to be considered as any other party and its counsel is to be considered as any other counsel for any party.

5. I charge you that the defendants' plea of not guilty [fol. 2316] to the indictment puts in issue every material allegation of fact contained in the indictment and that throughout the trial the defendants' denial of the evidence offered against them by the prosecution puts the burden upon the Government to prove the defendants' guilt on each and every essential element of the crime beyond a reasonable doubt.

6. The defendants on trial in this case are presumed to be innocent of the crime with which they are charged. This presumption of innocence has the weight and effect of evidence in their behalf. This presumption of innocence with which the defendants are at all times clothed is not a mere form to be disregarded by you at pleasure, but it is an essential, substantial part of the law and binding upon you in this case to give the defendants the full benefit of this presumption. This presumption of innocence outweighs and overbalances all conjectures, innuendos, suspicions and suppositions.

7. In your consideration of all matters of fact, and in your weighing of the evidence, you have no right to assume the guilt of a defendant, and then try to reconcile the testimony with such assumption; but it is your sworn duty to presume the innocence of the defendants and to give them the benefit of such presumption all through the trial and at

every stage of the investigation of the evidence in the [fol. 2317] jury room, until it is overcome, if it ever is overcome, by proof.

8. I charge you that the defendants are not obliged to prove that they are innocent of the charge made against them; on the contrary, the burden of proving their guilt is upon the prosecution. The prosecution must prove each fact and circumstance essential to the guilt of the defendants. This burden which the prosecution has never shifts but always remains with the prosecution throughout the trial. If the prosecution has failed to satisfy you of the truth of each and every fact material and essential to the guilt of the defendants, it is your duty to bring in a verdict of not guilty.

9. I charge you that the defendants cannot be found guilty of an offense under the statute upon which this indictment is found unless every element of the offense as described and defined in the statute is proved by the Government beyond a reasonable doubt.

10. I charge you that to sustain a conviction of conspiracy to commit espionage, the Government must prove the essential elements of that crime by substantial evidence which excludes every other hypothesis but that of guilt.

11. I charge you that it is not enough to convict the [fol. 2318] defendants that the evidence on behalf of the Government is credible and raises a probability or his or her guilt.

12. I charge you that it is not enough to convict the defendants of conspiracy to commit espionage unless all the elements of the crime are proved by the Government beyond a reasonable doubt.

13. I charge you that in order to overcome the presumption of innocence, the evidence must not only be consistent with the theory of guilt beyond a reasonable doubt, but must be inconsistent with, and must exclude, every reasonable theory of innocence; and as long as you are able to reconcile the evidence with any reasonable theory of innocence of the defendants, the law makes it your duty to do so; and if, upon a full consideration of all of the evidence in the case, you still feel that there is a reasonable possibility of the innocence of the defendants, then you must find them not guilty of the crime charged.

14. I charge you that circumstantial evidence is not direct proof of a fact. It is evidence which tends to prove a disputed fact by proof of other facts which have a tendency to lead the mind to infer that the fact sought to be established is true.

15. I charge you that the law does not require a defendant [fol. 2319] to take the witness stand and testify in his own behalf. The failure, therefore, of any defendant to take the witness stand and so testify does not create any presumption against him or any other defendant. I further charge you that you must not permit such fact to weigh in the slightest degree against any such defendant or any of his co defendants, nor should this fact enter into your discussions or deliberations in any manner.

16. I charge you that the prosecution and the defendants are entitled to the individual opinion of each juror on the issue of fact in this case. It is the duty of each of you to consider and weigh all the evidence in the case, and from such evidence to determine, if you can, the question of guilt or innocence of the defendants. When you have so determined that question, you should not be influenced in giving your verdict by the mere fact that any number or all of your fellow jurors may have reached a different conclusion. If, after careful consideration, your mind is made up, and you are convinced that you are right, it will be your duty to stand by your decision and not to abandon or surrender that decision, if it represents your conscientious conclusion.

[fol. 2320] 17. While it is your duty to confer and deliberate with each other before arriving at a verdict, nevertheless, the verdict which you render must represent the real judgment and honest conclusion of such of you, after such deliberation conscientiously reaches a decision on the facts, you have no right to surrender your decisions to the opinion of other jurors, or a majority of them for the purpose of preventing a disagreement or for the purpose of arriving at a compromise.

18. I charge you that in evaluating the evidence and coming to your determination you are to treat this case no differently from the way you would treat any defendant charged with a crime in any other criminal case; that you

should arrive at your verdict solely upon the evidence and the law applicable to the charge and the facts as given to you by the Court.

19. I charge you that the Government of the United States is one of the parties or litigants in this case and it is to be accorded no preferential treatment over any other party or litigant.

20. I charge you that no inference is to be drawn against any defendant who has properly exercised his constitutional privilege against testifying as to any matters which may tend to incriminate him or her.

[fol. 2321] 21. I charge you that you are to subject the testimony of all witnesses called on behalf of the prosecution, with the exception of accomplice testimony, to the same scrutiny and the same standards as you would the testimony of witnesses called on behalf of the defendants in determining the truth or falsity of such testimony.

22. I charge you that any accounts of the proceedings in this case in newspapers, radio, or other media of communication are not to be considered by you in weighing the evidence in this case or in arriving at your verdict; but, on the contrary, you are to disregard any such accounts and decide the issues in this case solely on the evidence presented in the court proceeding.

23. I charge you that each defendant is entitled to a consideration of the evidence in this case as it applies to him or her individually with respect to his or her individual guilt or innocence, and your verdict must be based purely on the evidence received against him or her.

24. I charge you that your verdict must be arrived at without any influence of bias, prejudice, passion, patriotism, or any other matter not related to the evidence adduced at the trial of this case.

25. I charge you that if, after giving due consideration [fol. 2322] to the fact that you may be in disagreement with the opinions of some of your fellow jurors who have reached a conclusion opposite to yours, you still entertained a reasonable doubt as to the guilt of these defendants or any of them, it is your right and your duty to hold fast to your conscientious determination, even though the trial would result in a disagreement.

26. I charge you that you owe allegiance to no one in this case in arriving at your verdict except to your own judgment and conscience.

27. I charge you that the race, color, religion, creed, or position in society of these defendants are not to enter into your deliberations in arriving at your verdict, and I charge you further that these defendants are entitled to equal treatment under our law.

28. I charge you that Communism, the possibility of the defendants' belief in Communism, or the possibility or probability of the defendants' membership in the Communist Party or any other organization is not an issue at this trial and is not to be considered by you or to influence you in any way in relation to any consideration of the crime charged.

29. I charge you that Communism, the possibility of the defendants' belief in Communism, or the possibility or probability of the defendants' membership in the [fol. 2323] Communist Party is not to be considered by you as evidence of the defendants' guilt of the crime charged.

30. I charge you that the possibility or probability of the defendants' membership in the Communist Party is not to be considered as evidencing a scheme or plan to commit the crime charged.

31. I charge you that the possibility or probability of the defendants' membership in the Communist Party is not to be considered as evidencing or throwing light upon the defendants' intent to commit or motive in committing the crime charged.

32. I charge you that the defendants are not on trial for being members of the Communist Party.

33. I instruct you that the persons mentioned by the Government in the indictment herein as alleged co-conspirators, Ruth Greenglass and Harry Gold, are to be treated as accomplices; and this likewise applies to the co-defendants, David Greenglass and Anatoli A. Yakovlev.

34. I charge you that an accomplice in this case is anybody that the prosecution charges agreed or confederated with any or all of the defendants in the commission of the crime charged, as alleged in the indictment.

35. I charge you that you should consider the testimony

[fol. 2324] of accomplices with care and caution, and scrutinize their testimony with the utmost circumspection.

36. I charge you that you should consider the testimony of accomplices with suspicion.

37. I charge you that in testing the credibility of any witness' testimony you may consider that the witness is a self-confessed perjurer.

38. I charge you that if you find that any witness is a self-confessed perjurer you may consider his testimony with care, caution, and suspicion.

39. I charge you that if you find that any witness is a self-confessed perjurer you should consider his testimony with care, caution, and suspicion.

40. I charge you that in determining the credibility of any witness you may take into consideration the motive of the witness so testifying.

41. I charge you that in determining the credibility of any witness you may take into consideration the self-interest of the witness so testifying.

42. I charge you that no inference is to be drawn against the defendants, Julius Rosenberg and Ethel Rosenberg, because of the incidents relating to Morton Sobell's (co-defendant) journey to and trips in Mexico.

[fol. 2324] The defendants reserve and ask leave of the Court to reserve to them the right to ask the Court for additional proposed instructions to the jury.

The Clerk: The Court is about to charge the jury. All persons wishing to leave the courtroom should do so now, as no one will be permitted to leave until the Court has finished his charge.

[fol. 2325] CHARGE OF THE COURT

(I. R. Kaufman, J.)

Madam and gentlemen of the jury:

I should like to extend to you my appreciation for your attentiveness during the course of this trial, and I want to particularly express my gratitude for the sacrifice which

you have made in neglecting your businesses and your personal affairs so that justice could be meted out.

It has been a long day, it has been a trying day for all of us, and I again want to say that I appreciate your attentiveness, your promptness during every session of this trial, your promptness this morning when we convened one hour earlier than usual, your promptness after the lunch period which was a shortened lunch period, and the interest which you have shown in this entire proceeding.

Your service as jurors in this case is the best recognition of each and every one of you of your duties as citizens.

In my selection of the jury I spoke of justice. I said that justice cannot flourish under our American system of jurisprudence unless all of us—you and I—are ready to make some sacrifices to attain the desired end. You cannot have [fol. 2326] justice unless you are ready to approach your task of determining the issues with your minds completely barren of prejudice or sympathy. Just as the defense is entitled to a determination based on the evidence without the injection of bias in the process of decision, so is the Government entitled to your deliberation free from the injection of sympathy or fear of duty or some other equally improper consideration.

I think you have been duly impressed with the fact that you perform a very important function in the administration of justice; but while you sit as jurors you are not just the average layman or the average man or woman who is taking part in some business discussion. You are under oath as jurors. You are sworn officials in that respect, charged with certain duties and obligations in the administration of justice. You have taken an oath to render a true verdict on the evidence, and in your selection I endeavored, by the questions that were presented to you, to be certain of the fact that the litigants before the court would receive a fair and impartial trial.

Now, as you approach the performance of one of the most sacred duties of citizenship, the meting out of justice, I must remind you again that it is your duty to weigh the [fol. 2327] evidence in this case calmly and dispassionately, without sympathy or prejudice, for or against either the Government or the defendants. The rich and the poor,

the persons of every race, creed and condition stand alike before the bar of justice.

The very importance of the case makes it all the more urgent that you heed these words of caution. In this connection you will bear in mind at all times that these three defendants are charged here as three individuals, and that the guilt or innocence of each must be passed on by you separately, pursuant to and in accordance with the instructions which I am about to give you.

The first thing I want to make plain to you is the way in which our American system of jurisprudence defines the duties of the judge on the one hand, and those of the jury on the other. It is exclusively my function clearly to set forth the rules of law which govern the case, with instructions as to their application. On these legal matters you must take the law as I give it to you; you are not at liberty to do otherwise. Thus I shall have the indictment read to you and the statute applicable to the case. You are not supposed to be lawyers; you are not supposed to be informed on the provisions of the statute or the principles [fol. 2328] of law that may apply to the proper consideration of the evidence in the case, but you are the sole triers of the facts. It is not what counsel may say a witness testified to or what counsel may say a document contained or showed, nor even what the Court might say. It is what you, the jurors, decide. And I might say at this point that counsel for both sides are to be given equal consideration—both occupy the same position before the Court.

There are twelve of you jurors, who will ultimately receive this case. If there is any question in your mind, if you have any division as to what a witness may have testified to concerning some particular incident, if you get to such a point, if you can't depend on your recollection of the facts, if you think it is vital, it is necessary that you have the testimony read back to you pertaining to this particular incident, you have the right to have your recollection refreshed by requesting that that part of the witness' testimony be read to you here in the courtroom, and the stenographer will do so.

As you deliberate, please be careful to listen to the opinions of other jurors, as well as to ask for an oppor-

tunity to express your own views, if you have views you care to express. No one juror holds the center of the [fol. 2329] stage in the jury room and controls or monopolizes the deliberations. You all have a chance to express your views; exchange views; and don't be afraid to change your view because of pride of opinion, if you are convinced that your original view is wrong. It would be silly for you to sit in a corner and sulk because someone else does not agree with you. Talk it out. That at what deliberation means.

You will endeavor to arrive at a verdict providing that this can be done reasonably and consistently with the conscientious convictions of each one of you jurors. It is important to both the Government and the defendants that the case be determined. You understand, of course, that under our system of law in a criminal case, any verdict of a jury must be a unanimous verdict. A ten to two verdict, or a nine to three verdict, is not any good. The verdict of the jury is the verdict of the jury as a collective body and of every member of the jury.

Justice in your hands is like a child in the hands of its parents. Just as a child will be warped in a home of bickering and wrangling—so will justice be thwarted in a jury room of heat, bickering and wrangling. Just as the child can be guided by discussion and reasoning so can you mete out justice by discussion and reasoning among your- [fol. 2330] selves. I repeat a phrase so commonly used by my brethren of the bench—The more heat of argument in the jury room, the less light.

So much for what your functions are and how you are to go about your work in the jury room.

As I instructed you when the jury was chosen, the defendants are accused of violating the statute which reads in part as follows:

> "If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished according to law."

Now, it is alleged in the indictment that the defendants conspired to violate section 32, which has been referred to in the law I have just read. Section 32 provides in part that

> "Whoever, with intent or reason to believe that it is to be used . . . to the advantage of a foreign nation, communicates, delivers or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, . . . or to any representative, officer, agent, employee, subject, or [fol. 2331] citizen thereof, either directly or indirectly, any document, writing . . . sketch, . . . note, . . . or information relating to the national defense, shall be punished according to law."

Now, what is the charge contained in the indictment?

If Mr. Schaefer will be good enough to read the indictment, we will hear what that charge is.

The Clerk: Yes, your Honor.

(Reading:

"The Grand Jury charges:

"1. On or about June 6, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as 'John', David Greenglass and Morton Sobell, the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold and Ruth Greenglass, named as co-conspirators but not as defendants, and with diverse other persons presently to the Grand Jury unknown, to violate subsection (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and [fol. 2332] reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, the Union of Soviet Socialist Republics and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and informa-

tion relating to the National Defense of the United States of America.

"Over-Acts

"1. In Pursuance of said conspiracy and to effect the objects thereof, in the District of Columbia, on or about June 6, 1944, the defendant Julius Rosenberg visited a building at 247 Delaware Avenue, Washington, D.C.

"2. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 15, 1944, the defendants Julius Rosenberg and Ethel Rosenberg conferred with Ruth Greenglass.

"3. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, the defendant Julius Rosenberg gave Ruth Greenglass a sum of money.

"4. And further in pursuance of said conspiracy and to [fol. 2333] effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, Ruth Greenglass boarded a train for New Mexico.

"5. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant Julius Rosenberg went to 266 Stanton Street, New York City.

"6. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant, Julius Rosenberg, received from Ruth Greenglass a paper containing written information.

"7. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendants Julius Rosenberg and Ethel Rosenberg conferred with the defendant David Greenglass and Ruth Greenglass.

"8. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendant Julius Rosenberg gave Ruth Greenglass a portion of the side of a torn cardboard 'Jello' box.

[fol. 2334] "9. And further in pursuance of said con-

spiracy and to effect the objects thereof, in the Southern District of New York, on or about January 10, 1945, the defendant Julius Rosenberg introduced the defendant David Greenglass to a man on First Avenue, New York City.

"10. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg conferred with the defendant David Greenglass.

"11. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant Julius Rosenberg received from the defendant David Greenglass a paper containing sketches of experiments conducted at the Los Alamos Project.

"12. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 14, 1945, the defendant David Greenglass boarded a train for New Mexico.

(Section 34, Title 50, United States Code.")

[fol. 2335] The Court: Thank you, Mr. Schaefer.

The Clerk: You are welcome, your Honor.

The Court: As I told you when you were being selected, this indictment that has just been read to you is merely a method by which the prosecution calls into a court of justice individuals who, it is claimed, violated the law. It is not evidence of the guilt of the defendants nor does it detract in any degree from the presumption of innocence with which the law surrounds them until their guilt is proven.

This presumption of innocence remains with them throughout the trial of the case and applies to the consideration of each of the essential ingredients going to make up the crime charged unless and until you, the jury are satisfied beyond a reasonable doubt, from the evidence adduced by the prosecution, on whom is the burden of proof, of the guilt of the defendants as charged.

You may well ask what is meant by the expression "beyond a reasonable doubt". I believe the words themselves give the answer. It is such a doubt as is based on reason,

that is, a doubt which a reasonable man might entertain. It is not a fanciful doubt; it is not an imagined doubt; is it not a doubt that a juror might conjure up in order to avoid performing an unpleasant duty. Let me repeat, [fol. 2336] it is a reasonable doubt, that is a doubt which arises in a juror's mind because of something in the evidence in the case, or the absence of evidence in the case. The burden, therefore, is on the Government to establish the guilt of the defendants beyond a reasonable doubt.

Now, it is not necessary for the Government to prove the guilt of the defendants beyond a possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason would be that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proof that the defendants are guilty be established beyond a reasonable doubt, not beyond all possible doubt.

Circumstantial evidence is entitled to such consideration as you may find it deserves depending upon the inferences you think it necessary and reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the jury must be convinced beyond a reasonable doubt of the guilt of the defendants. Circumstantial evi- [fol. 2337-2337a] dence consists of facts proved from which the jury may infer by process of reasoning other facts sought to be established as true.

Different inferences, however, may be drawn from the facts and circumstances in the case, whether proved by direct or circumstantial evidence. The prosecution asks you to draw one set of inferences while the defendants ask you to draw another. It is for you to decide and for you alone, which inferences you will draw. If all the circumstances taken together are consistent with any reasonable hypothesis which includes the innocence of the defendants, or any of them, the prosecution has not proved their guilt beyond a reasonable doubt, and you must acquit them. On the other hand, if you find that all of the circumstances

established by the evidence in this case, taken together, satisfy you beyond a reasonable doubt of the guilt of the defendants, in accordance with these instructions, it is your duty to find the defendants guilty.

The defendants are accused of having conspired to commit espionage. Espionage, reduced to essentials, means spying on the United States to aid a foreign power. Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, the enforcement of the espionage laws takes on a new significance. Our national well-being requires that we guard against spying on the secrets of our defense, whether such spying is carried on through agents of foreign powers or through our own nationals who prefer to help a foreign power.

[fol. 2338] This does not mean that the mere allegation or use of the word "espionage" should justify convicting innocent persons; however, irrational sympathies must not shield proven traitors.

For two or more persons to conspire, confederate or combine together to commit or cause to be committed a breach of the criminal law of the United States is an offense of grave character which involves a plotting to subvert the law. It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. Because of this the statute has made a conspiracy to commit a crime a distinct offense from the crime itself. From the point of view of the law there is danger to the public when two or more people conspire to do something that is unlawful because by virtue of the aggregation of numbers the intent assumes a more formidable disadvantageous aspect to the public.

What is a conspiracy? A conspiracy may be defined as a combination of two or more persons, by concerted action, to accomplish a criminal and unlawful purpose, or some purpose not in itself unlawful or criminal, by criminal or unlawful means. The gist of the offense is the unlawful combination or agreement to violate the law. As Mr. Justice Holmes said many years ago: "A conspiracy is a partner-
[fol. 2339] ship in criminal purposes."

However, it is not necessary in order to constitute a con-

spiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plan or means by which the unlawful scheme was to be made effective.

It is sufficient if two or more persons, in any manner, or through any contrivance, impliedly or tacitly, come to a mutual understanding to accomplish a common and unlawful design, knowing its object, and that one or more of them commit an overt act in furtherance of the conspiracy. In other words, where an unlawful end is sought to be effected and two or more persons, actuated by the common purpose of accomplishing that end, knowingly work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although his part therein be a subordinate one, or be executed at a remote distance from the other conspirators. All the conspirators need not have originally conceived the conspiracy, or participated in its conception. Those who [fol. 2340] come in later, with knowledge of the aims and purposes of the conspiracy, and cooperate in the common effort to attain the unlawful results become parties thereto. A conspiracy is not ended as long as the evidence shows an intention to continue it. Each alleged conspirator who was the agent of the others at some time during the life of the conspiracy remains an agent during all of its existence, except that a conspirator has the right to withdraw from the execution of the conspiracy, but it requires affirmative and effective action thus to withdraw and terminate his liability in the conspiracy. It is a principle of law that a condition once shown to exist continues, until a different situation is shown.

Persons may be guilty of being parties to a conspiracy though the objects of the conspiracy were never accomplished. On the other hand, proof concerning the accomplishment of the objects of a conspiracy is the most persuasive evidence of the existence of the conspiracy itself. Simplifying this perhaps a bit more, success of the venture, if you believe it was successful, is the best proof of the venture or the agreement. (In this case the Government

claims that the venture was successful as to the atom bomb secret.) The agreement is generally a matter of inference [fol. 2341] deduced from acts of the persons accused done in pursuance of an apparent criminal purpose.

You are further instructed that where several persons are proved to have combined together for the same illegal purpose, any act or declaration made by one of them during the pendency of the illegal enterprise, and in furtherance of the common objects, is not only evidence against himself but is evidence against the other conspirators who, when the combination is proved, are as much responsible for such declarations and acts as if made and committed by themselves, because each is deemed to assent to or command what is done by any other in furtherance of the common objects.

With these general principles as a guide you will approach the important question of whether the prosecution has proved beyond a reasonable doubt the existence of the conspiracy alleged in the indictment, and if such a conspiracy did exist, whether the defendants or any of them were parties to it and whether such defendants entered it with knowledge of its nature and purposes.

You must first determine from all the evidence in the case, relating to the period of time defined in the indictment, [fol. 2342] whether or not a conspiracy existed. If you decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he was a member of the conspiracy. He or she. In considering whether or not a particular defendant was a member of the conspiracy, you must do so I repeat that: In considering whether or not a particular defendant was a member of the conspiracy, as to that particular element, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership of a particular defendant from the evidence concerning his own actions, his or her own actions, his or her own conduct, his or her own declarations, or his or her own statements, and his or her own connection with the actions and conduct of others. However, once you have determined that a defendant was a member of the conspiracy, using this test, you may then consider as if made by him the statements and declarations of other co conspirators, made

in furtherance of the conspiracy and during the existence thereof as alleged.

As I have stated before, the indictment in effect charges conspiracy or agreement between the defendants now on trial and persons, such as David and Ruth Greenglass, Harry Gold and Anatoli A. Yakovlev, and others to the [fol. 2343] grand jurors unknown, to deliver to a foreign government, to wit, the Union of Soviet Socialist Republics, information relating to the national defense of the United States, with the intent that such information would be used to the advantage of the Union of Soviet Socialist Republics.

The indictment further enumerates twelve overt acts allegedly done to effect the object of the conspiracy. The overt act done to effect the object of a conspiracy need not be a criminal act. That is the law. And it is further the law that it is not necessary that each defendant or co-conspirator join in each overt act, or that each defendant or co-conspirator be named in an overt act. Furthermore, the Government has to prove beyond a reasonable doubt, only *one* of the aforementioned overt acts in furtherance of the conspiracy, in addition to proving the existence of the conspiracy and the membership of each defendant in the conspiracy beyond a reasonable doubt.

I want to explain and define several terms in the statute and in the indictment itself.

The charge is that of conspiring to transmit information relating to the national defense to the advantage *of a foreign nation* please note that I have said a "foreign nation." This means that there are some kinds of informa[fol. 2344] tion relating to the national defense which must not be given to a friendly power, not even to an ally. It has been said by a Justice of the Supreme Court,

> "No distinction is made between friend and enemy. Unhappily the status of a foreign government may change".

I charge you that whether the Union of Soviet Socialist Republics was an ally or friendly nation during the period of the alleged conspiracy is immaterial, and you are not to consider that at all in your deliberations.

I charge you further that the information which it was the object of the alleged conspiracy to transmit must have related to the national defense. The term "relating to national defense" is a "generic concept of broad connotations, relating to the military and naval establishments and the related activities of national preparedness." The term includes all matters directly and reasonably connected with the defense of our nation. The connection must not be a strained one or an arbitrary one. I charge you that the information, which the defendants are accused of conspiring to obtain, must be secret information relating to the national defense, that is, information which was not public at the time of the alleged conspiracy.

[fol. 2345] Furthermore the statute requires that the alleged conspirators have intended or have reason to believe that the information to be obtained was to be used to the advantage of a foreign nation. This requires those prosecuted to have acted in bad faith. The sanctions apply only when scienter or intent is established.

So you must find whether a conspiracy did exist and whether this conspiracy called for

(1) the transmitting of secret information

(2) relating to the national defense as I have defined it;

(3) to the Union of Soviet Socialist Republics or an agent thereof

(4) intending or with reason to believe that the information was to be used to the advantage of the Union of Soviet Socialist Republics.

I believe it is my duty as a Judge to help you crystallize in your minds the respective contentions and evidence in the case and I shall therefore review briefly these contentions of the prosecution and of the defendants.

The prosecution claims that the defendants on trial conspired together with each other, that is, Julius Rosenberg, Ethel Rosenberg, Morton Sobell and with others, [fol. 2346] such as Anatoli A. Yakovlev, David Greenglass, Ruth Greenglass, and Harry Gold, to communicate, deliver and transmit to the Union of Soviet Socialist Republics, and representatives and agents thereof, documents and information relating to the national defense of the United States,

with intent and reason to believe that it would be used to the advantage of the Union of Soviet Socialist Republics; that the representative of the Union of Soviet Socialist Republics for the purpose of receiving the secret information was Anatoli A. Yakovlev, who was a Vice-Consul for the Union of Soviet Socialist Republics at its legation in New York City and who left the country in December, 1946.

The prosecution further contends that Julius and Ethel Rosenberg, David and Ruth Greenglass, Morton Sobell and Harry Gold were part and parcel of this conspiracy to obtain banned information and to transmit it to Yakovlev, the Russian representative, and that clandestine and fraudulent devices were resorted to in obtaining this information.

The prosecution alleges that Morton Sobell was a friend of Julius Rosenberg and of Max Elitcher from their college days until recently. It is the prosecution's contention that Sobell was part of the conspiracy to transmit secret information to Russia and that he suggested Elitcher as a [fols. 2347-2347a] possible recruit to Julius Rosenberg.

The prosecution further contends that Julius Rosenberg visited Elitcher's home in Washington, D. C. in June, 1944 and asked him to get classified information from the Navy Department—that Russia needs help—and that Sobell was helping in the matter; that when Elitcher related the details of Rosenberg's visit to Sobell while on a camping trip in West Virginia State Park in 1944 Sobell became very angry at the reference to him by Rosenberg, but that Sobell did not deny that he was, as Rosenberg said, helping in the matter.

The prosecution further contends that Elitcher saw Julius Rosenberg in the summer of 1945 at Rosenberg's home in New York, and that at that time Julius Rosenberg said that he was up for dismissal from his Government job and that he was relieved that it was because of other activities and not because the Government had found out about his espionage activities (and that the Government contends Rosenberg was dismissed in fact); that Rosenberg visited Elitcher in Washington in September, 1945 and said there was a continuing need for getting material for Russia. The prosecution further contends that Sobell directly solicited Elitcher for classified information from the Navy Depart-

ment, in particular a fire-control report, while Sobell was working at the General Electric plant in Schenectady, New York, in 1946 and that Sobell asked Elitcher to see Julius Rosenberg about the espionage activities; that at the end of 1946, and this is the Government's contention, Elitcher visited Julius Rosenberg and told him he had seen Sobell, and Rosenberg said that Elitcher should discontinue his Communist Party activities and not see him because of leaks in espionage work.

[fol. 2348] The prosecution states further that Sobell and Elitcher met in 1947 in New York at which time Sobell was working at the Reeves Instrument Corporation, and Sobell asked Elitcher if he knew any progressive electrical engineers for espionage purposes; that Elitcher at that time related his troubles with his wife, and Sobell was concerned whether she knew about Elitcher's activities; that in 1948 Elitcher informed Sobell that he was leaving the Navy Department and Sobell asked him to speak to Julius Rosenberg—that the three met and Julius Rosenberg attempted to persuade Elitcher to stay in Washington, Rosenberg stating that they needed somebody to work in the Navy Department—and that Sobell acquiesced in this; they further contend that Julius Rosenberg related to Elitcher that he, Rosenberg, had gotten to a Russian in higher circles in order to do espionage.

Further the Government claims that Sobell delivered important information to Julius Rosenberg in July, 1948 at which time Elitcher and Sobell drove to Rosenberg's house because of Elitcher's having been followed to New York—and that Sobell returned from Elitcher's house and told Elitcher Julius Rosenberg said he was not worried about Elizabeth Bentley because he did not think she knew.

The prosecution further claims that it was also a part of [fol. 2349] this same conspiracy to obtain information regarding the atomic bomb project; that Yakovlev was the collector of this information for Russia and that Harry Gold was one of his couriers; that Harry Gold as courier collected the information regarding the atomic bomb from various persons in this country, including Dr. Klaus Fuchs and David Greenglass; that David and Ruth Greenglass were drawn into this conspiracy by Julius and Ethel Rosenberg's

urgings and their request for information regarding the atom bomb. They further contend that secret information regarding the atom bomb project was transmitted by the Greenglasses to Julius Rosenberg; that the information was typed from written reports by Ethel Rosenberg, microfilmed by Julius Rosenberg and then transmitted to the Russians.

The Government attempted to show the link with the Russians both by the testimony of the introduction by Julius Rosenberg of a Russian to David Greenglass in January 1945, at which time Greenglass testified he drove around for about 20 minutes and the Russian asked technical questions concerning the atom bomb—and also by the testimony as to the Jello box-side incident—that one-half of the Jello box-side was kept by Julius Rosenberg to be used as a recognition signal by the courier to be sent by Rosenberg to pick up [fol. 2350] secret information obtained by Greenglass at Los Alamos, and that Gold subsequently received the part of the box-side from Yakovlev and used it to obtain the information from Greenglass, and that at the same time Gold, in identifying himself to the Greenglasses said—words to the effect "I come from Julius," which the Greenglasses contend was a greeting that had been prearranged between the Rosenbergs and the Greenglasses.

The Government contends that you have a right to infer that there existed a link between Julius Rosenberg and Yakovlev in that Julius Rosenberg in some way transmitted the recognition signal, that is, the Jello box-side to Yakovlev.

Bear in mind—please listen to this, ladies and gentlemen—that the Government contends that the conspiracy was one to obtain not only atomic bomb information, but other secret and classified information; that the information including the report regarding fire-control equipment requested of Elitcher by Sobell or Rosenberg was classified; that the atomic bomb information transmitted by the Rosenbergs was classified as top secret; that based on Rosenberg's alleged statements to Greenglass, other secret information such as mathematical data on atomic energy for airplanes, information relating to a "sky platform" project [fol. 2351] and other information was obtained by Julius Rosenberg from scientist contacts in the country.

The Government alleges that Julius Rosenberg received a citation, a console table and a watch from the Russians for his espionage activities; that Ethel Rosenberg received a watch from the Russians; that Julius Rosenberg received various sums of money from the Russians which he gave to the Greenglasses; that he gave Ruth Greenglass $150. in November 1944 when she first went to New Mexico to see her husband, and in the spring of 1950 he gave David Greenglass $1000. and then $4000.; and I think there was some other amount, $800. or something like that, and that Harry Gold received an envelope containing $500. from Yakovlev which he gave to David Greenglass.

It is contended by the Government that the defendants intended to benefit Russia and that their membership in the Communist Party and adherence to its principles showed a preference for the Soviet form of government.

Now I wish to instruct you at this point that I have admitted testimony as to membership or activity in the Communist Party and also testimony to the effect that the Communist Party is dedicated to furthering the interests of the [fol. 2352] Union of Soviet Socialist Republics solely on the question of the defendants' intent or reason to believe that the alleged secret information to be transmitted would be used to the advantage of a foreign nation, in this case the Union of Soviet Socialist Republics, which is an element of the charge that the Government must prove beyond a reasonable doubt.

I wish to caution you most strenuously that proof of Communist Party membership or activity does not prove the offense charged in this indictment, but may be considered by you solely on the question of intent which is one element of the crime charged here. It will be up to you to determine whether you believe that testimony and, if so, the weight that you will give it on the question of intention.

It is obviously impossible to ascertain or prove directly what were the operations of the minds of the defendants. You cannot look into a person's mind and see what his intentions are or were. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case enables one to infer with a reasonable degree of accuracy what another's intentions were in

doing or not doing certain things. With a knowledge of [fol. 2353] definite acts you may draw definite logical conclusions. You are in your affairs continually called upon to decide from actions of others what their intentions or purposes are. And experience has taught you that frequently actions speak more clearly than spoken or written words. You must therefore rely in part on circumstantial evidence in determining the guilt or innocence of any of these defendants.

The prosecution does not claim that all of the conspirators were known to one another—rather it has offered testimony to show the furtiveness and secrecy employed by the alleged conspirators; that recognition signals such as the Jello box-side and the note referring to Paul Street were used; that notes on atomic energy information were burned by Rosenberg in a frying pan; that to the minute meetings were scheduled for the passing of information.

Finally, the prosecution says that when the conspiracy was uncovered by the arrest of Dr. Klaus Fuchs and later of Harry Gold in February and May of 1950 respectively, the defendants, fearful of being apprehended, attempted to flee and that their attempts to flee followed a pattern which also indicates a preconceived plan—that Morton Sobell did reach Mexico and assumed many aliases there while seeking means of exiting from the country, and that he was [fol. 2354] apprehended only after being delivered to the United States by the Mexican authorities; that Julius Rosenberg intended to flee the country and that he and Ethel Rosenberg and their children obtained passport photos from Mr. Schneider for that purpose, and that he also asked the Greenglasses to flee, and to further that purpose he gave David Greenglass $5000, and elaborate instructions whereby he could reach Czechoslovakia from Mexico, and that he also asked Dr. Bernhardt as to the required inoculations in order to go to Mexico.

As to any evidence of flight adduced by the Government in this case, I charge you: Evidence of flight does not create any presumption of guilt, although it is a legitimate ground for an inference of a guilty mind, if the jurors conclude that such inference is justified. Flight is a circumstance which the jury may consider as having a tendency to prove the

guilt of a defendant, as an indication of a consciousness of guilt. It should not be considered alone and by itself. It must be weighed with all of the surrounding circumstances, and of course, it should be considered together with all the other evidence in the case in determining the guilt or innocence of these defendants.

I charge you that no inference is to be drawn against the defendants Julius and Ethel Rosenberg because of the inci- [fol. 2355] dents relating to Morton Sobell's journey to and trips in Mexico except that you may consider whether such journey or trips show a preconceived plan as part of the conspiracy to be followed by the conspirators in attempting to escape the country.

Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point that out because the Government contends that Sobell was in the general conspiracy to obtain information of a secret nature. To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country.

If you do not believe the testimony of Max Elitcher as it pertains to Sobell, then you must acquit the defendant Sobell.

If you find that there was a conspiracy and that Morton Sobell was a member of the conspiracy, any statements or acts of any co-conspirators are binding upon him because the law is that once you have joined a conspiracy attempting to accomplish an unlawful objective, the acts of the co- [fol. 2356] conspirators done in furtherance of the same objective, even though the co-conspirators are unknown to you, are binding upon you.

Now, on the other hand, the defendants' version of this case is as different as night is from day. The two versions are not reconcilable. You must determine which one you will believe. The defendants Julius and Ethel Rosenberg categorically deny that they or any of them ever conspired among themselves or with anyone else to obtain secret in-

formation pertaining to the national defense of the United States, intending to transmit the information to the Union of Soviet Socialist Republics, to the advantage of that nation.

The defendants, Julius and Ethel Rosenberg, deny that they knew any Russians or transmitted anything at any time to the Russians. They deny that they ever asked Ruth Greenglass to obtain information relating to the Los Alamos project from her husband David Greenglass, or that they ever obtained any such information from the Greenglasses. They deny any knowledge of a Jello box incident, or of the pointing out of Ann Sidorovich as a future courier, or that they knew Harry Gold, Jacob Golos or Elizabeth Bentley, or that they received any presents from the Russians. They allege that the only console table they had was purchased [fol. 2357] from R. H. Macy was one for $21. in 1944 or 1945.

In relation to this point, I would like to call your attention to the testimony of Mrs. Cox, offered by the prosecution, which stated that Mrs. Rosenberg had told her in 1945 that the console table was a belated wedding gift from a friend of Mr. Rosenberg's. They admit that they have a portable typewriter and that Ethel types and does work for civic organizations, but allege that the typewriter has never been used to type reports on secret information for microfilming and transmission to Russia.

They admit further that they knew in February, 1945 that David Greenglass was contemplating stealing things from the Army but did not pursue the matter. They allege that David Greenglass seemed troubled and asked their help last spring, but that they did not know his reason, and that any testimony by the Greenglasses against them is due to the trouble that they had with the Greenglasses while in business together, or for some other unknown reason.

Julius Rosenberg denies that he introduced David Greenglass to a Russian or that he ever entertained any Russians. He denies that he gave any money to David Greenglass other than some inconsequential loan while in business [fol. 2358] together.

As to the incident in which he told Ruth Greenglass's sister to go into the bathroom, he says it was at Ruth's

request since she wanted to tell him that she was worried about her husband's taking things from his army base.

Julius Rosenberg admits that he inquired of Dr. Bernhardt regarding inoculations for a person going to Mexico but he states that it was at David Greenglass's request and that he did not know what the trouble was or why David Greenglass would want to go to Mexico.

The defendant further admits that he has been friendly with Morton Sobell since their college days and that the Sobells have visited at his home, but he denies that he at any time received any information relating to the national defense or any microfilm from Sobell.

Julius Rosenberg admits that he saw Elitcher socially in 1944 and in April 1945, but he denies that those visits were at Morton Sobell's request or that he, Rosenberg, solicited the obtaining nor did obtain any classified information from Elitcher.

He further denies that he and Sobell met with Elitcher to try to induce him to stay at his job with the Navy Department.

[fol. 2359] Ethel Rosenberg specifically denied having typed any information relating to the national defense for transmission to Russia, or that she engaged in any way in a conspiracy to transmit such information.

The defendant Morton Sobell has entered a plea of not guilty to the charge in this case. By doing so he has put in issue every material allegation in the indictment, and the Government must prove each and every material allegation of the charge beyond a reasonable doubt.

Counsel for Sobell contend that Sobell was not a member of the conspiracy, that Elitcher is a perjurer who should not be believed, and that the Government has failed to prove Sobell guilty beyond a reasonable doubt as required.

You have heard their summation and therefore I will not discuss their contentions further.

[fol. 2360] From this brief recital of the contentions advanced in behalf of the defendants you can see how completely irreconcilable are the versions of the facts presented by the prosecution on the one hand and the defendants on the other. And so this seems to be an appropriate time for me to amplify my statement made at the outset of these in-

structions, that you are the sole and exclusive judges of the facts.

No matter how careful a judge may be to avoid it, there is always the possibility that the jury or some particular juror may get an impression that the judge has some opinion with reference to the guilt or innocence of the defendants, or that he thinks that some particular phase of the case is more important than another, or that some particular witness is more credible than another or that a certain inference of fact should or should not be made and so on. If you have formed any such impression you must put it out of your mind and utterly disregard it. Nothing I have said during the trial nor in these instructions was intended to give any such impression; nor were any remarks or questions addressed to any of the witnesses or to counsel so intended. On the contrary, I have been scrupulously careful to avoid any comment which might even remotely suggest that I considered the subjects of the weight of testimony, the credibility of witnesses, the inferences to be [fol. 2361] drawn or the relative importance of one segment of the evidence as against another, or the determination of the guilt or innocence of the defendants, as coming within the orbit of any of my functions as the presiding Judge in this trial.

And so I tell you again, you are the sole and exclusive judges of the facts of this case; you, and you alone, will pass upon the credibility of all the witnesses, all in accordance with the instructions on that subject, which I shall give you later. Despite anything said by me or by counsel, your recollection of the testimony must prevail whenever your recollection differs from what I have said or what counsel for either side have said in argument or otherwise; it is for you to determine what the proofs adduced by both sides disclose, regardless of anything said by me in the brief and necessarily incomplete summaries which I have given you of the contentions of the parties; and it is for you and you alone to weigh the proofs, draw such inferences of fact therefrom as you determine should be drawn and to decide each and every one of the issues of fact in the case.

And so we come to one of the crucial questions in the case.

By what yardstick and in accordance with what rules of law are you to judge the credibility of the witnesses? [fol. 2362] Each one of you has given careful attention to the testimony as it came from the witnesses themselves. You have had a full opportunity to observe the witnesses and you have heard the testimony discussed in great detail by counsel.

You are the exclusive judges of the relative importance and credibility of the witnesses.

That I may refer to some portion of the evidence and not to another should not be taken by you as any indication as to my opinion of the comparative importance or weight of that particular evidence.

Now, sharp issues of fact are presented for determination and to a great extent the decisions depend upon the veracity of certain witnesses and the support or lack of support that they receive from other evidence and circumstances. The procedure established by our courts of law and a fair method is to submit issues of fact to a jury of sensible, conscientious and impartial men and women experienced in life's affairs; let them hear and see the witnesses, and then decide the issues. That is the duty you are called upon to perform. It is an honorable service and an important one for all concerned. Each juror must form his or her judgment solely upon the evidence presented in the court, [fol. 2363] uninfluenced by anything read in the newspapers or heard on the radio or in private conversation. The juror "sizes up the witness"—so to speak. To reconcile all the testimony is impossible, and it is for you members of the jury, upon careful consideration of all the proven facts and incidental circumstances, to determine what the truth is. You are to subject the testimony of all witnesses to the same scrutiny and the same standards, whether called by the prosecution or by the defendants.

You should consider—and naturally would, I think,—a witness' demeanor, his background, his or her candor, or lack of candor, possible bias or prejudice, means of information, and accuracy of recollection. You should consider whether the witness' testimony is supported or whether it is contradicted by other credible testimony or circumstances.

You should particularly consider whether a witness has an interest in the case for when a witness has an interest in the result, the temptation does exist to color his or her testimony, or possibly withhold certain facts. Do you believe that testimony has been affected by a personal interest of the witness? And if so—to what extent? You should weigh all these factors in considering how, and to what extent, such testimony is worthy of credit. I am not saying that every witness will falsify because he has an interest, [fol. 2364] but I say you may consider the possibility.

The greater a person's interest is in the case, the stronger is the temptation to falsify testimony, and the interest of the defendants who took the stand is of a character possessed by no other witness. Manifestly they have a vital interest in the outcome of the case. This interest is one of the matters which you may consider along with all the other attendant circumstances in determining the credence you will give to their testimony. Here again you may find that a defendant is telling the truth despite his obvious interest in the outcome, but you may consider a defendant's temptation to falsify.

As to the testimony of David Greenglass, Ruth Greenglass and Harry Gold, you must consider it carefully and act upon it with caution, for they are accused of being accomplices. An accomplice in this case is anybody that the prosecution charges agreed or confederated with any or all of the defendants in the commission of the crime charged, as alleged in the indictment. I am not saying that because a person is a co-conspirator or an accomplice, he or she is not to be believed. If this were so, many cases in this court could not be proven. In the Federal Court a defendant can be convicted upon the uncorroborated testimony of an ac- [fol. 2365] complice whose testimony satisfies the jury of the defendants' guilt beyond a reasonable doubt.

If you find that any witness has made a material misstatement with the intention of misleading you, you may disregard that part of the witness' testimony; you may disregard all of it if you do not believe it, or you may accept part of it if you find part of it is reliable and disregard the rest of it.

The fact that the defendant, Morton Sobell, who has a

right so to do, has not seen fit to testify in this case cannot be considered by you as any evidence against him or against any of the other defendants, or as a basis for any presumption or inference unfavorable to him or to them. You must not permit such fact to weigh in the slightest degree against any defendant, nor should it enter into your discussions or deliberations. The prosecution must prove defendants guilty by the required degree of proof as explained in these instructions. They are not required under our law to establish their innocence.

I charge you further that no inference is to be drawn against any defendant who has exercised his or her constitutional privilege against testifying as to any matters which may tend to incriminate him or her.

[fol. 2366] The defendant Ethel Rosenberg was cross-examined concerning her refusal to answer certain questions when she appeared before the Grand Jury on the ground that the answers might tend to incriminate her. Her failure to answer such questions is not to be taken as establishing the answers to any questions she was asked before the Grand Jury, but may be considered by you in determining the credibility of her answers to those same questions at this trial.

If you find that the law has not been violated, you should not hesitate for any reason to render a verdict of not guilty. But, on the other hand, if you find, in accordance with these instructions, that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty. Remember, you have taken an oath to determine this case upon the evidence.

Rulings made by me in the course of the trial are rulings purely on matters of law. They reflect no views of mine on the facts of the case. You should reach your verdict without fear or favor, without sympathy for or against either the defendants or the Government.

You are instructed that the question of possible punishment of the defendants in the event of conviction is no [fol. 2367] concern of the jury, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. You cannot allow a consideration of the punishment which may

be inflicted upon the defendants to influence your verdict in any way; the desire to avoid the performance of an unpleasant task cannot influence your verdict.

Your verdict will be guilty or not guilty as to the defendant Julius Rosenberg; guilty or not guilty as to the defendant Ethel Rosenberg and guilty or not guilty as to the defendant Morton Sobell.

Is there anything, counsel? Step up, if there is.

(The following discussion was had at the bench, outside the hearing of the jury.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. E. H. Bloch: There are two matters, if the Court please, items 36 to 40 of the defendants' proposed requests to charge, with respect to accomplice testimony and the jury taking it with suspicion, and also the testimony of a self confessed perjurer should also be taken with care and caution and suspicion.

The Court: You don't need to repeat. You just give me the numbers.

Mr. E. H. Bloch: 36 to——

[fol. 2368] The Court: I refuse to charge in the very language that you asked for. I have covered each one of those subjects in my charge.

Mr. E. H. Bloch: I respectfully except.

The Court: Very well.

Mr. E. H. Bloch: It was a suspicion, or the failure to charge the suspicion part, to which I object.

The Court: Very well.

Mr. E. H. Bloch: I am going to look. I have got some notes.

The Court: Make it quick, Mr. Bloch. I want to send this jury out right away.

Mr. A. Bloch: I except to that part of your Honor's charge, where you charged that the answers given by the defendant Ethel Rosenberg before the grand jury, may be taken in consideration by them in respect to her credibility, and I ask you to charge that if the answers were given in good faith, before she was charged with the crime or indicted or arrested, and she felt that she, in answering those

questions, might tend to incriminate herself, the fact that she answered these questions here, has no bearing on the matter, because here she is charged with the crime; she is on trial, and in order to defend herself she has answered the questions.

[fol. 2369] The Court: Well, I will not enlarge upon my charge.

Mr. A. Bloch: I except.

The Court: Very well.

Mr. A. Bloch: Then there is one more thing. I may have missed something—oh yes, your charge on the contention of the defendant that the reason that the defendants contend that the reason the Greenglasses did not tell the truth was a question of money; there is a further contention, the contention is that in order to save his wife from prosecution or arrest——

The Court: I said, "And for other reasons." I did say that.

Mr. A. Bloch: I know, but I would like to have it expressed.

The Court: No, I will not add to it. I think I said to the jury that I am only covering certain portions.

Mr. A. Bloch: I except.

The Court: Very well.

Mr. Kuntz: I have just one objection that will take half a second.

The Court: Go ahead.

Mr. Kuntz: We object, if your Honor please, to your charge that the jury can consider, and you admitted evidence [fol. 2370] of membership of activities in the Communist Party, on the question of intent of the defendants, and that the jury can so consider. We take objection to that.

The Court: Very well.

Mr. Phillips: One other. I don't know if I understood you correctly, but I think one time in your charge you said something relating to the present tension.

The Court: What?

Mr. Phillips: Tension, international world tension.

The Court: Oh, yes.

Mr. Phillips: As a special reason for being careful in enforcement of the law. I except to that statement.

The Court: Very well.

Mr. E. H. Bloch: If the Court please, I would like to except to that portion of the charge, which submits to the jury consideration on the basis of motive or intent, evidence concerning——

The Court: He just objected to that while you were away.

Mr. E. H. Bloch: I beg your pardon.

There is just one further exception that I would like to take. I would like to except to that part of your Honor's charge, dealing with motives or intent, and I ask your [fol. 2371] Honor to charge that the intent required under the statute is not merely an evil intent, but a specific intent, to the advantage——

The Court: I think I have covered it.

Mr. E. H. Bloch: I——

The Court: Very well.

Mr. Phillips: Not to overlook anything, may I at this moment——

The Court: Let's get on.

Mr. Phillips: —I respectfully except to the theory that your Honor asserted in relation to the conspiracy here, as though when two men talked of intending——

The Court: As it pertains to your client.

Mr. Phillips: As pertaining to my client.

The Court: Very well.

(End of discussion at bench.)

The Court: It becomes my duty now to excuse Mr. Moore, Mr. Nein, Mr. Lombardi and Mrs. Allen with the deep gratitude of the Court for your time, your interest in this case. I want you to know that we feel that you have performed well. I suggest also to the jurors, the alternate jurors I am about to excuse, that they do not discuss this case with anybody or permit anybody to discuss it with them.

[fol. 2372] My bailiff will escort the alternate jurors into the jury room first.

I would suggest the rest of the panel wait here for a minute and as soon as they have left with their hats and coats, then we will swear the marshals and the jury will retire.

You are excused for the balance of the term with the thanks of the Court.

(Marshals sworn.)

The Court: Very well, the jury will retire.

(Jury retired at 4:53 P.M.)

[fol. 2373] (The following took place at 6:30 p.m. in chambers:)

The Court: I have a communication from the jury, gentlemen. The jury would like a copy of the indictment and the jury would like a list of the witnesses. This is signed by the foreman.

Mr. Schaefer, you have a copy of the indictment. The list of witnesses, I think you ought to get together and agree upon between yourselves. Submit the list by agreement and we will send it in.

(At 6:40 p.m. the following took place:)

The Court: All right, now, gentlemen, the indictment and the list of witnesses are about to be sent in. You have all examined it and I take it it is perfectly agreeable with everybody.

Mr. Saypol: Satisfactory.

Mr. E. H. Bloch: All right.

Mr. Kuntz: The only thing, they may have meant the whole list.

The Court: They will let us know in a couple of minutes.

(At 8:10 p.m. the following took place in chambers:)

The Court: I have a communication from the jury, reading as follows:

[fol. 2374] "One of the members of the jury would like to hear Mrs. Ruth Greenglass' testimony, starting with first approach that Rosenberg made to her regarding securing of information for Russia."

Now, what I would suggest, if that is agreeable, I want to know where they want to end, because otherwise the stenographer will be reading all the testimony, and you can't very well, when they are there, suddenly say, "Well, is this

enough?" So what I think I shall do is to send back a communication to the jury, for them to specify just where they would like to end. Then we can have that part marked.

Is that agreeable?

Mr. Saypol: Yes.

Mr. A. Bloch: That is fair.

The Court: Would you write on here, please, Mr. Schaefer, "Judge would like to know at what point you would like the reporter to stop with his reading of this testimony?"

Is it agreeable, gentlemen?

Mr. A. Bloch: It is.

Mr. Saypol: Yes, it is.

(The above mentioned note was sent in to the jury.)

(At 8:12 p.m. the jury sent in a note and the following occured:)

[fol. 2375] The Court: (Reading): "Up to the line that David came home for his first furlough in January, 1945," is the reply from the jury.

So let us get the testimony at that part.

Mr. Cohn: Would you interpret that to mean the conversation or the preliminaries? I think it is at page 972.

Mr. A. Bloch: I think that covers quite a bit. It goes to conversation before she went out West; conversation she had with her husband out West and also cross-examination on that point.

Mr. Lane: And the conversation she had when she came back from the West, and conversation as she testified to.

Mr. Saypol: I don't think they have asked for any cross.

The Court: They haven't asked for the cross.

(Further discussion off the record.)

Mr. A. Bloch: You will find cross-examination of that at 1044.

The Court: I am not going to read the cross to them unless they request it.

Mr. A. Bloch: Well, I think when they ask for testimony, it means all the testimony on the subject.

The Court: We will start reading at 972, the top, and then [fol. 2376] over here at 982. Then I will ask the jury when we get finished whether that is what they want.

Mr. A. Bloch: Will you ask them whether they want the cross?

The Court: I won't put it in their mouths, but I will ask them whether there is anything else they want.

Mr. A. Bloch: I think if you give them the direct, you ought to give them the cross. That is the whole testimony on that topic.

The Court: The jury is intelligent. If that is what they want, they will ask for it.

Mr. A. Bloch: They might not think there is any other testimony on the subject.

The Court: I am going to handle it that way.

Mr. Phillips: Two testimonies go together. They didn't ask for the pages; they asked for the testimony.

(The following took place in the courtroom, after the jury took their seats in the jury box, at 8:15 p.m.:)

The Court: I have a communication from the jury, which I have read to all the counsel, in which they request the reading of the testimony of Mrs. Ruth Greenglass, commencing with the first approach that the defendant Rosenberg made to her regarding securing of information for Russia, up to the line, as the jury puts it, "That David [fol. 2377] came home for his first furlough in January, 1945."

Mr. Slavin, will you be good enough to read that to the jury, please?

(The reporter read the testimony, starting at page 972, beginning with:

"Q. And did you in fact go out to New Mexico in November, 1944?", and ending on page 982 with the question and answer reading as follows:

"Q. Approximately when did he arrive in New York City?

"A. On New Year's Day, 1945."

The Court: Have we read what the jury wanted?

Jurors: Yes.

The Court: Very well, the jury may retire.

Mr. E. H. Bloch: If the Court please, I make the request that the stenographer also read the cross-examination of Ruth Greenglass on this specific point——

The Court: Your request is denied. That has not been requested by the jury. The jury will retire.

We will give the jury exactly what they request.

Mr. E. H. Bloch: I respectfully except.

(Whereupon the jury retired from the courtroom at 8:30 p.m.)

(At 9:42 p.m. the following proceedings occurred in the [fol. 2378] absence of the jury.)

The Court: I have another communication from the jury——

Mr. Saypol: I notice the defendants aren't here.

The Court: I don't think they need by here for this. There isn't any problem——

The Clerk: They are on their way up now—here they are.

(At this point the defendants entered the courtroom.)

The Court: The jury wants all the exhibits except that which has been impounded, so will you gentlemen please get all the exhibits together, in evidence.

Mr. A. Bloch: Satisfactory to us.

The Court: Except those that have been impounded, and check them off together and give them to the bailiff so that they can be sent in. All right.

(Short recess.)

[fol. 2379] (At 10:55 p.m., the following proceedings occurred in chambers, outside of the presence of the jury:)

The Court: I have a communication from the jury which reads as follows:

"Judge Kaufman:

"One of the jurors has some doubt in his mind as to whether he can recommend leniency for one of the defendants. He is interested in knowing your mind on the matter."

I might say that I am not prepared as yet to give the answer. I want to give some thought to it.

Do you gentlemen have any thoughts on the matter?

Mr. A. Bloch: I can't very well suggest anything. It is all up to you, Judge.

The Court: Yes.

Mr. A. Bloch: Because ultimately you will be the one will pass on it.

The Court: My present inclination is to just read back to them that portion of my charge which dealt with punishment. I have sent my clerk to look up one case on the subject.

Mr. A. Bloch: I know they do it in state courts in every case where there isn't a compulsory——

[fol. 2380] The Court: Off the record.

(Further colloquy off the record.)

(The jury returned to the courtroom at 11:00 p.m.)

The Court: I have a communication from the jury which reads as follows:

"one of the jurors has some doubt in his mind as to whether or not he can recommend leniency for one of the defendants. He is interested in knowing your mind on the matter."

This communication was addressed to me.

I shall reread to you members of the jury that portion of my charge which dealt with the matter of punishment. Then I will give you some short explanation.

I said to you in my charge, you are instructed that the question of possible punishment of the defendants in the event of conviction is no concern of the jury and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. You cannot allow a consideration of a punishment which may be inflicted upon the defendants to influence your verdict in any way. The desire to avoid the performance of an unpleasant task cannot influence your verdict.

[fol. 2381] Now I want to say that if you want to make a recommendation, you can if you desire, but I believe it should be stated to the jury that the recommendation that you are going to make or intend to make should not in any way affect your decision. The decision is to be based on the

evidence, and it is my prerogative to follow or disregard any recommendation that you may make on the matter of punishment. Is that clear?

All right; very well, you will retire.

(The jury retired at 11:60 p.m.)

[fol. 2382] Jury in box at 12:10 a.m.)

The Court: Madam and gentlemen of the jury: I want to suit your convenience as much as I can. However, I also must take into mind the problems which the Marshal has for the district. Now, if you feel that you believe a verdict can be reached in a reasonable period of time, why then, I think it would probably be a good idea to continue your deliberations. Otherwise I will have to advise the Marshal that I will consider locking you up for the evening, and it will take him, I imagine, about an hour to make arrangements for accommodations, and so forth. I would suggest with that in mind, you go back into your jury room and formally send me a communication on the wish of the jury, and also, if there is anything else that I can be of any help on.

All right, you may retire.

(Jury excused.)

(The following took place in chambers at 12:22 a.m.)

The Court: I have a communication from the jury, which reads as follows:

"Judge Kaufman

"Will you kindly make arrangements as you suggested from the bench due to still existent dissident vote amongst us."

[fol. 2383] I think that what I am going to do is to ask the jury whether they have arrived upon a verdict as to any defendant, under Rule 31, and if they have, then I will ask them to go back and give us the verdict on that.

Mr. A. Bloch: Tonight?

The Court: Yes.

Mr. A. Bloch: That is cruelty to us.

The Court: Why prolong the agony? If they have it, they have it.

Mr. Kuntz: Judge Kaufman, I have a sort of a feeling that if you do that, that juror—now, I don't know who it is and I don't know for whom it is—might feel that this is a suggestion——

The Court: What I will do, if you agree, I will simply say, send in a note without sending for them again, and ask them if they have agreed upon a verdict as to any defendants. If so, to return the verdict as to that defendant or defendants, and then we will continue the deliberations as to others.

Mr. Saypol: I think that is in direct accord with the rule, is it not?

The Court: Yes.

Mr. Kuntz: I am not questioning the rule. I am just a bit [fol. 2384] uneasy about the effect it might have. Now, I know you don't want to create any effect that should not be created, but I am just a little bit uneasy.

The Court: There is nothing unusual about it.

Mr. E. H. Bloch: Even though you have the power to do that and the right to fully exercise that power, would anybody be hurt if the jury were asked whether they can agree, and if they say no, to send them to a hotel? They always have time to return their verdict tomorrow morning.

The Court: Well, if they have agreed upon any defendant, there is no reason why, if the jury has been polled and if they have agreed, why there shouldn't be such a verdict. Let them be the best judge of that. I will merely put the question to them. I won't ask for an answer in the courtroom and I will send them back there to bring in a verdict to that defendant or defendants.

Mr. Kuntz: What does the rule say? I haven't read it.

The Court: (Reading): "Several defendants"—this is under "Verdict," Rule 31—"If there are two or more defendants, the jury at any time during the deliberations may return a verdict or verdicts with respect to a defendant or [fol. 2385] defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again."

Mr. E. H. Bloch: Isn't there implicit in that rule that a

verdict in a case where there are several defendants should be read at one time?

The Court: No, no.

I might tell you that the law on the subject is that it can be done. I remember, as an assistant United States Attorney, way back in 1938, when I tried the heart disease insurance cases before Judge Patterson, that that is exactly what happened. There was a partial verdict taken at night and there was another verdict taken the next morning. That was before the rule.

Mr. Saypol: Not only that, but it is my recollection that the Court of Appeals recommends such a practice.

Mr. Kuntz: I didn't raise it as a legal question. I was thinking of the question of expediency.

The Court: Would you rather I sent a note in?

Mr. Phillips: I would personally like to see them locked up for the night.

The Court: I am going to ask them the question.

[fol. 2386] Mr. Kuntz: I don't think we should have any objection to a note, as distinguished from them coming in.

The Court: All right, Mr. Schaefer, will you take this note to the jurors.

> "Judge Kaufman would like to know if you have agreed upon a verdict as to any of the defendants? If so, you may return your verdict as to the defendant or defendants as to whom you have agreed."

(To the clerk) Will you read that into the record?

The Reporter: I took it down as you dictated it.

The Court: All right, gentlemen, I am going to send that note in, and if you have no objection——

Mr. Saypol: Does your Honor think it advisable to let the record show that as to those upon which they haven't agreed that they continue to deliberate?

The Court: Well, do you think I ought to say that in the note? Is that your thought? I intend to do that.

Mr. Saypol: Oh, I see.

Mr. E. H. Bloch: Your Honor, I think that the hour is quite late. We came in very early this morning. It is not that we are tired but I think the jury is pretty tired and I

[fols. 2387 2387-A] think in all fairness to the defendant, as to whom the jury has been unable to agree, they ought to get a night's sleep and resume their deliberations.

The Court: Well, I shall do that.

Mr. E. H. Bloch: Oh, I assumed that——

The Court: As to that particular defendant, I am going to lock them up and let them go on and deliberate. Oh, yes, there will be no further deliberation as to that. All right, gentlemen.

In the meantime, will you tell the marshal to start making arrangements for their sleeping accommodations.

(Bailiff brings note into the jurors.)

(The following took place at 12:35 a.m. in chambers.)

The Court: All right, Mr. Bloch, I have an answer to the communication which I sent to the jury and it reads as follows:

> "Judge Kaufman
>
> "We have reached our verdict on two of the defendants and we prefer to reserve rendering our verdict on all these defendants until we have complete unanimity."

So, I am locking them up.

(Discussion off the record.)

(Adjourned to March 29, 1951, at 10:00 a.m.)

[fol. 2388] New York, March 29, 1951;

10:00 O'clock a. m.

(At 11:00 a. m. the following proceedings occurred in the courtroom.)

The Court: Bring the jury in.

Mr. Saypol: I have asked Mr. Bloch to note the fact that Mr. Bloch, Sr. is not here and by agreement he will speak for him.

Mr. E. H. Bloch: That is correct.

The Court: All right.

(The jury entered the courtroom at 11:01 a. m.)

The Clerk: Will the jurors please answer as their names are called.

(Jurors' names called by the clerk.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: Yes, your Honor, we have.

The Clerk: How say you?

VERDICT

The Foreman: We the jury find Julius Rosenberg guilty as charged.

We the jury find Ethel Rosenberg guilty as charged.

[fol. 2389] We the jury find Morton Sobell guilty as charged.

The Clerk: Members of the jury, listen to your verdict as it stands recorded. You say you find the defendant Julius Rosenberg guilty, Ethel Rosenberg guilty, and Morton Sobell guilty and so say you all?

Jurors: Yes.

Mr. E. H. Bloch: If the Court please, I ask that the jury be polled as to each defendant.

The Court: Very well.

The Clerk: Members of the jury, listen to your verdict as it stands recorded as to Julius Rosenberg. You say you find Julius Rosenberg guilty——

The Foreman: Yes.

The Court: Ask each one as to each defendant.

Do you find Julius Rosenberg, Ethel Rosenberg and Morton Sobell guilty, Mr. Lebonitte?

The Foreman: Yes, your Honor.

The Court: All right.

(The clerk polled the jury and each of the jurors stated that the verdict announced by the foreman was their verdict.)

The Clerk: The jury has been polled.

Mr. E. H. Bloch: If the Court please, I would like to [fol. 2390] ask leave to make any motions with respect to the jury verdict——

The Court: On the day of sentence.

Mr. E. H. Bloch: On the day of sentence.

The Court: Very well.

Mr. E. H. Bloch: I think I am entitled to five days under the rules.

The Court: (To jury) I want to say to you, madam and members of the jury, that you have my deepest gratitude for the conscientious and industrious way in which you went about deliberating in this case. This case is important. It is important to the Government of the United States.

My own opinion is that your verdict is a correct verdict, and what I was particularly pleased about was the time which you took to deliberate in this case. I must say that as an individual I cannot be happy because it is a sad day for America. The thought that citizens of our country would lend themselves to the destruction of their own country by the most destructive weapon known to man is so shocking that I can't find words to describe this loathsome offense.

I want to say to defense counsel that I appreciate the courtesy that they extended to the Court during the course [fol. 2391] of this trial. I think they demeaned themselves as attorneys should.

To you, Mr. Saypol, Mr. Lane, Mr. Cohn, Mr. Kilsheimer, Mr. Branigan who isn't here, I want to congratulate you all upon your capable and fair presentation of this case, that your preparation was painstaking. And to the FBI, to Mr. Xorton and to Mr. Harrington whom I never knew until this case began, I observed them in this court, in the tradition of the FBI, perfect gentlemen at all times, fair and decent.

Again I say a great tribute is due to the FBI and Mr. Hoover for the splendid job that they have done in this case.

[fol. 2392] STATEMENT OF MR. SAYPOL.

Mr. Saypol: Will your Honor allow me to say something in response even though it may be unusual?

I would like to say it in the presence of the jury while they are here.

Those of us who have practiced law for some time know that a Court is never to be thanked on the conclusion of a

proceeding, and properly so, on the premise that that is its duty, regardless of the way in which its duty is exercised.

Knowing your Honor as I do, almost impelled as I would be to express myself felicitously in respect of the conduct of the trial, I shall refrain with dignity from doing so.

By the same token, at the commencement of my summation I expressed to the members of the jury our appreciation at the Government's table for its patient consideration, for its careful attention. I still refrain from thanks on the premise that the jury too, just as your Honor, need no thanks for having done that to which we are collectively and individually sworn.

Your Honor has taken my thought, although perhaps as a prosecutor one might expect from me more likely some expression of enthusiasm at the conclusion of a prosecution which has turned in the direction which my staff and I pursued.

[fol. 2393] The conviction of defendants in a criminal case is no occasion for exultation. It has been said that the Government never loses a case—because if there is a conviction the guilty are punished, and if there is an acquittal, the presumption of innocence must permanently prevail. The conviction of these defendants, however, is an occasion for sober reflection. That you the jury so considered it is evidence from the fact that you deliberated for six and a half hours last night, and the nature of your requests as to the evidence and the identity of the witnesses amongst other things demonstrates that you complied throughout with the instructions of the learned Court; and that your conclusion is a mature, a reflected one.

I say to you now that the decision toward prosecution was predicated on the same factors.

It is not possible for a great nation to be free from traitors, but this case shows that it is possible to reach them and ultimately bring them to the bar for punishment. Lord Acton said, "Eternal vigilance is the price of freedom." That has been repeated time and again. This case has merely adapted that saying to the atomic age.

The jury's verdict is a ringing answer of our democratic [fol. 2394] society to those who would destroy it. First, because a full, fair, open and complete trial—in sound American tradition—was given to a group of people who

represented perhaps the sharpest secret eyes of our enemies. They were given every opportunity, as you the jury know, to present every defense and, as I said for myself and my colleagues in my summation, I would fight at all times for their right to defend themselves freely and vigorously.

Secondly, your verdict is a warning that our democratic society, while maintaining its freedom, can nevertheless fight back against treasonable activities.

The case itself has implications so wide in their ramifications that they involve the very question of whether or when the devastation of atomic war may fall upon this world. The case is a necessary by-product of the atomic age. Let us hope that it will serve to supply the democracies of the world with some significant lessons.

Those of us in the Department of Justice—Attorney General McGrath and I and our staffs, Mr. J. Edgar Hoover and the men of the Federal Bureau of Investigation—who have been close to the development of this case, have always been aware of the implications.

To you the jury as citizens I impart the assurance all [fol. 2395] of us are continuing our work in this specialty.

I want to pay tribute to my staff and the men who prepared this case and presented it, for the credit is due entirely to them: to Mr. Lane, my chief assistant; to Mr. Cohn, my confidential assistant; to Mr. Kilsheimer and to Mr. Branigan.

I have had many occasions, like the Judge has, to express my admiration for the work of the men and the women of the Federal Bureau of Investigation. It can only be expressed in superlatives. It is not a police force; it is an investigative agency. Its vigilance is all-pervading, untiring, ceaseless—what is more, completely willing.

You jurors may go now, for you disband and revert to your personal roles, I hope satisfied that our work continues.

I say again I shall not thank you. I will say I am proud to have worked in this court before you and I am satisfied of the propriety, of the virtue, of the justice of your verdict.

[fol. 2396] STATEMENT OF MR. KUNTZ

Mr. Kuntz: If your Honor please, I wonder if I may have the privilege of a few words in my own behalf.

The Court: Yes.

Mr. Kuntz: I do want to thank the jury as your Honor did for the patience and care with which they sat in this case.

I wanted to say to them through you that it was my duty as an officer of this court to defend the rights of my client zealously and strongly, and that I wanted to assure the jury and the Court, as one officer of the court to another officer of the court here, that what I might have said during the trial or during the examination or summation was said as an officer of the court, and was not said against any person as an individual.

I want to assure this jury that to the best of my ability I did strive hard on behalf of my client.

The Court: I am sure you did .

Mr. Kuntz: And I want to say to Mr. Saypol as an officer of this court, as one officer of the court to another, I am willing to shake his hand after a job that we both had to do.

The Court: Well, I am certain that that is so.

Mr. E. H. Bloch: If the Court please, I was going to refrain from making any comment. I am going to be very [fol. 2397] brief. I would like to restate what I said when I opened to the jury. I want to extend my appreciation to the Court for its courtesies, and again I repeat I want to extend my appreciation for the courtesies extended to me by Mr. Saypol and the members of his staff, as well as the members of the FBI, and I would like to say to the jury that a lawyer does not always win a case; all that a lawyer expects is a jury to decide a case on the evidence with mature deliberation.

I feel satisfied by reason of the length of time that you took for your deliberations, as well as the questions asked during the course of your deliberations that you examined very carefully the evidence and came to a certain conclusion.

[fol. 2398] The Court: Thank you.

Now I say to the jurors, I almost feel as if I will miss seeing those faces here morning after morning, but I know

it has been a tremendous inconvenience to most of you. It has taken you away from your businesses. But by doing so you have shown recognition of your duties as citizens.

Most citizens don't realize that something is demanded of them, that they cannot have all the virtues of America, they cannot take all the time without giving something in return. I think you realize it now by your jury service.

You remember I was rather impatient with the panel when we were trying to select the jury because so many requests were being made by people for what I considered puny reasons for excuse from service. Well, I am sure that those people didn't recognize their duties of citizenship. To them, well, they got a little notice to go to the Federal Court to serve, and they were going to get out of that as best they could.

I think a process of education is necessary today for our citizens. They must once again realize it is not all a case of take. You have got to do some giving in America.

[fol. 2399] I just want to give you one last admonition before I send you off, and that is, please don't discuss this case, don't discuss your deliberations, don't discuss your verdict with the members of the press or with anybody.

God bless you all.

The Clerk: Members of the jury, you are excused for the balance of the term with the thanks of the Court.

(The jury left the courtroom at 11:15 a. m.)

Mr. E. H. Bloch: If the Court pleases, when is the Court disposed to set the date of sentence?

The Court: Incidentally, I want to say that I think we have all overlooked the fine work that the Marshal's office has done.

I know that they——

Oh, marshal, I am glad to see you (referring to Mr. Carroll).

I know that frequently you had gotten the devil from some of the judges, and I think it is only fair once in a while that they pay you some tribute for the fine work that you and your deputies did throughout the trial. I know it was quite a drain on your office.

Mr. Carroll: Thank you.

Mr. Kuntz: And they have been so very courteous to us, and I want to thank them on behalf of my client and myself. [fol. 2400] They have been very courteous.

Mr. E. H. Bloch: And that is true so far as the Rosenbergs.

The Court: Thank you.

Mr. Saypol: Well, might I say a word, if you will allow me, very briefly?

The Court: Very brief. I want to get a little sleep.

Mr. Saypol: Since your Honor has volunteered it, I know it better than anybody. They have worked with us overtime till midnight, till 1:00, 2:00 and 3:00 in the morning, on Saturdays, on Sundays, willingly, without complaint, without meals, without overtime pay.

I express my appreciation to Mr. Carroll, as I have before, and to all of his colleagues, and I know that it will continue.

The Court: Now Mr. Saypol, I would suggest April 5th for sentence, next Thursday.

Have you any other thoughts on the subject?

Mr. Saypol: No, I think that is appropriate, however the Court is disposed.

The Court: All right, gentlemen, April 5th for motions and sentence.

Mr. E. H. Bloch: Motions and sentence.

The Court: At 10:30 a. m. Thank you.

The defendants are remanded.

(Adjourned to April 5, 1951, at 10:30 a. m.)

[fol. 2401] New York,

April 5, 1951,

10:30 o'clock a. m.

The Court: I will hear motions.

Mr. E. H. Bloch: If the Court please, you will recall that the defendants were given the opportunity to make motions and their time was extended until today, and at this time I would like to make one motion:

ROSENBERGS MOTION FOR A NEW TRIAL AND IN ARREST OF JUDGMENT

The defendants Julius Rosenberg and Ethel Rosenberg move for a new trial under Rule 33 of the Federal Rules of Criminal Procedure and in arrest of judgment under Rule 34 of the Federal Rules of Criminal Procedure upon the first, all the grounds constitutional and other as though fully restated herein made to dismiss the indictment at the commencement of the trial in this action and also made at the end of the Government's case, and likewise made and repeated at the end of the entire case, and for judgment of acquittal, and secondly, upon all the objections and other motions made by the defendants during the trial which were decided adversely to the defendants, and upon all the exceptions taken to adverse rulings of the Court as well as [fol. 2402] the objections and exceptions taken to the Court's charge to the jury, and thirdly, upon the further ground that the rulings of the Court on the above, as stated in the first and second, prejudiced the defendants and denied them their right to a fair and impartial trial by jury as guaranteed by the Constitution of the United States.

The Court: Motion denied.

Mr. E. H. Bloch: I respectfully except.

The Court: I will hear Mr. Sobell's counsel.

Proceed, Mr. Phillips.

JOINDER BY SOBELL IN MOTION AND DENIAL THEREOF

Mr. Phillips: If your Honor please, on behalf of the defendant Sobell I join in the motion made by the other defendants as just stated by Mr. Bloch, and I trust your Honor will accept that offer with the same force and effect as though I had made the motion.

The Court: Yes.

Mr. Phillips: Initially. On the additional ground that I raised on behalf of the defendant Sobell not applicable to the other defendants at the close of the Government's case and at the close of the whole case, as though I repeated it at this time in the same language or approximately the same language.

The Court: Very well.

Mr. Phillips: Is it appropriate now to make a motion in arrest of judgment?

[fol. 2403] The Court: Yes.

Mr. Phillips: On the motion in arrest of judgment I shall be constrained, if your Honor please, to reveal some shocking circumstances which I shall do very, very reluctantly. I shall do so only from the conviction that the most important thing in my life at the present moment, more important than the two billion people living on this planet, are the rights of my client, Sobell.

The force and power of a retainer in the mind and heart of a lawyer who is conscientious in his work is more powerful, if your Honor please, than any other emotion, any other human emotion that I can think of.

In the thing that I am about to reveal, if your Honor please, there is much that is not beautiful, much that is not creditable to the law enforcement agencies of the United States of America, and I loving my country more than anything else feel that in revealing those circumstances I might injure my country in the eyes of the world, but I am powerless to stop and not to say what I must say.

If your Honor please, amongst the pieces of evidence in this case is an exhibit, Exhibit 25. That exhibit is a card, a small card on one side of which there is some typewritten matter and some script matter and the signature of Morton [fol. 2404] Sobell. I am not quarreling with that side of the card. Naturally I have my own opinion that the words and the script were written later, but that is beside the point, but on the reverse side of the card, after much script and some little typewriting there is at the bottom near within about a quarter of an inch of the bottom of that card, written three words in the script of a man by the name of Huggins. Huggins was the witness and he said it was his handwriting. Those three words read "Deported from Mexico."

Now your Honor please, if I am able to show that those words "Deported from Mexico" are a downright falsehood, I need not show that the law enforcement agencies, the Federal Bureau of Investigation knew about that because they must have known about that.

The Court: Well, you had your opportunity at the trial to show it, didn't you?

Mr. Phillips: Just a moment. I expected to be met by

that point and I shall meet that. I shall come to it eventually.

[fol. 2405] First let me state my facts on which I base my points.

The Court: Very well.

Mr. Phillips: Then if I have omitted anything before, if I haven't done my duty heretofore, if I was too stupid perhaps to see the point at the time——

The Court: You can be accused of many things, but not that, Mr. Phillips.

Mr. Phillips: But, if your Honor please, if at the moment I didn't see that point, because in the heat of something else, in some other thoughts I missed it, that is another problem. We will come to that in a little while.

"Deported from Mexico," these three words are as untrue as if I said, "The sun ceases to shine."

Mr. Saypol: Just a minute. I must ask an interruption here. If we are going to have any allegations at this stage of the case about untruths, about frauds, about anything that an astute lawyer with long experience has overlooked in the course of a fair and full trial, with all its opportunit-es, I must insist that it be done formally, by affidavit, so that those who perhaps may make charges which are not sustained may be looked to and brought to book.

The Court: No, I will take his motion at this point in arrest of judgment.

[fol. 2406] Mr. Phillips: If your Honor please, I did not say "I overlooked". I said, "if I overlooked."

The Court: All right. Now, I will say this, however: You remember, this is a motion in arrest of judgment.

Mr. Phillips: Arrest of judgment and discharge of the prisoner.

The Court: Very well. Now you get along with your point, Mr. Phillips, I will hear it.

Mr. Phillips: I don't think I am in the habit of taking much longer than I need in expressing thoughts.

The Court: Go ahead.

Mr. Phillips: What I am about to say, I am going to say on the strength of an affidavit, which I shall hand over to the Court. I am not saying this from hearsay, as though I were there, because I wasn't.

The Court: Whose affidavit have you got?

Mr. Phillips: The affidavit of my client, Morton Sobell.

The Court: I see. He had an opportunity at the trial to take the stand did he not?

Mr. Phillips: I say again——

The Court: Isn't this a roundabout way to deny allegations?

Mr. Phillips: I don't know which way that is, if your [fol. 2407] Honor please. If I have a right to make that motion, if I have a right to introduce——

The Court: You can't have your cake and eat it, you know. You had an opportunity to put him on the stand. He decided he didn't want to take the stand and deny these allegations.

Mr. Phillips: If your Honor pleases,——

The Court: Now, by way of an affidavit you are saying that something that the Government proved was not true.

Mr. Phillips: If your Honor please, all that your Honor says, I am going to meet eventually, before I am through with my discussion.

The Court: Go ahead.

Mr. Phillips: I assure you. I might say, however, before I reach that point, that what we did not do or what we overlooked to do will not excuse our Government in the brutal assault on a man and kidnapping a man and abducting an American citizen, born in this country, contrary to the statute and contrary to the laws.

The Court: Mr. Phillips, did you know what you are now stating while this trial was in process?

Mr. Phillips: I beg your Honor's pardon. I did not know it. I heard it.

The Court: You heard it.

[fol. 2408] Mr. Phillips: Yes.

The Court: You heard those facts, didn't you?

Mr. Phillips: Yes.

The Court: But you did not see fit, nor did your client see fit, at the trial to make an issue of t-at?

Mr. Phillips: Then why don't you wait for me? I did not expect that the Government would introduce a card which is a falsehood on its face. I did not expect that they would introduce a false statement in order to bolster up a theory of flight.

Mr. Saypol: I have to object.

Mr. Phillips: When it is a fact, if your Honor pleases——

Mr. Saypol: I have to inject myself again with great regret, because I think it is important for the Court in its reflection to remember that when this issue first arose in the course of the trial, there was vigorous opposition to the offering of secondary proof.

The Court: I remember it very well.

Mr. Saypol: And it was necessary to fly the witness up from Laredo, Texas, overnight to give direct testimony, so that at least there was that additional day in which there was knowledge.

The Court: Not only that, but the witness was cross-examined as to that particular phrase.

[fol. 2409] Mr. Saypol: True, true; but the defendant knew the day before what the contents of that card were.

The Court: All right.

Mr. Phillips: Will I, if your Honor pleases, be permitted by Mr. Saypol——

The Court: Go ahead.

Mr. Phillips: —to finish? I know he doesn't like this. I wouldn't in his place, either.

The Court: Oh, now, don't make that comment Mr. Phillips.

Mr. Phillips: To the extent it is provoked, I apologize to the Court.

Let me bring these facts to your Honor's attention.

On the 16th of August, 1950, Mr. Sobell, at his home, in Mexico City, had finished his dinner with his wife and two children, and one of the children, the infant—I think it was then twelve months old—was in bed. The affidavit is so brief that I might as well read it in exactly the words in which I have it, if your Honor please.

The Court: Can't you summarize it or characterize it? Maybe Mr. Kuntz could characterize it.

Mr. Phillips: I will give it to you in the words of Mr. Sobell, as he gave it to me:

[fol. 2410] "Morton, Sobell, being duly sworn, deposes and says:

"I am one of the defendants herein and I make this affidavit in the interest of justice and in furtherance of my

rights as an American born and brought up in this country.

"On Wednesday, August 16, 1950, at about 8:00 p. m. we had just finished our dinner in our apartment in Mexico City in the United States of Mexico, and while my wife and I were lingering over our coffee there was a knock on the door. My older daughter opened the door and three men burst into the room with drawn guns and bodies poised for shooting; these men did not ask my name, did not say what they wanted. I demanded to see a warrant, or some other legal process. No reply, except some vague charge that I was one 'Johnnie Jones' and that I robbed a bank in Acapulco in the sum of $15,000.00 was made. Of course, I vehemently denied the charge and tried to show them my papers, visas, etc., to prove that I was no bank robber.

"One of the men showed a piece of metal in his hand and said they were police. They were dressed in civilian clothes. A fourth man came later. He also was in civilian clothes.

[fol. 2411] "Only about ten minutes lapsed from the time that they came"——

I will give Mr. Saypol a copy of the affidavit.

Mr. Saypol: Yes, will you, please.

Mr. Phillips: Yes. (Continuing)

"Only about ten minutes lapsed from the time that they came till they hustled me out, and that was after I insisted on calling the American Embassy."

The next few words I inserted in ink. I will have Mr. Sobell initial those words. I omitted them in drafting the affidavit. (Continuing):

"but without being permitted to do so."

"They picked me up bodily and carried me down from the fourth floor to the ground floor. In the street I kept shouting for the police. A taxi was hailed and they opened the door; tried to force me into the taxi; when two more men came in and beat me over the head with blackjacks until I lost consciousness. I woke up in the taxi and I was stretched horizontally at the feet of the three men.

"When the car stopped in front of a building, they ordered me to get up; they told me to get into the building, but not to make a scene or they would plug me. We walked to the elevator; we went upstairs, and, we went into an office."

[fol. 2412] I might say, if your Honor pleases, that those men spoke English.

The Court: But they were Mexicans?

Mr. Phillips: I am giving you the facts as I got them.

The Court: You say they spoke English.

Mr. Phillips: I was not there, if your Honor pleases. I am giving you the facts as I got them from this affidavit. This affidavit must speak for itself.

The Court: Well, has your client said they were Mexicans and you left it out of the affidavit?

Mr. Phillips: They said they were Mexicans.

The Court: All right.

Mr. Phillips: (Continuing) "They sat me down and a slim, tall, dark man came over; he looked at me. I asked him what it was all about. He slapped me in the face and told me that they were the ones that were asking questions. At that point I discovered that my head was bloody and my shirt bespattered with blood.

"However, they asked me no questions, but they photographed me in several poses. We spent in that building from approximately 8:30 p.m. till 4:00 a.m. At 12:00 midnight, they offered me something to eat; but I had no appetite for food. During all the time no one questioned [fol. 2413] me. Some persons who identified themselves as officers to guard me chatted with me but expressed ignorance of the reason I was there.

"At 4:00 a.m. I was moved into a large four-door Packard and seated in the rear with two armed men, one on each side of me. At that moment, the same tall, thin man came to the door and spoke to my guards in English saying to them 'If he makes any trouble shoot him.'

"The driver of the car, who apparently was the leader of expedition, and who answered to the name of 'Julio' told me that they were taking me to the Chief of the Mexican Police for further action."

I suppose his name is pronounced "Hulio".

The Court: It doesn't make any difference how it is pronounced.

Mr. Phillips: I beg your pardon?

The Court: It wouldn't make any difference how it is pronounced.

Mr. Phillips: I wrote it, of course, as it is spelled, but

Mexican pronounciation, as far as I remember my little Spanish from 57 years ago, was "Hulio". I am wrong, if your Honor please, I should say 55 years ago. (Continuing) "With a number of stops for one reason or another, we drove on until about 6:00 p.m. At that Julio tried to [fol. 2413a] make a phone call or he did make one, and he told me that he was trying to get the chief of police. The same thing happened at about 10:00 p.m., and at midnight on August 17th, telling me that he was trying to make sure that the chief of police would be available.

[fol. 2414] "At about 1:30 a.m. we arrived at Nueva Lorado, we stopped in front of a building, and Julio went into the building and returned in about ten minutes and told me that he had spoken to the Chief and that the Chief told him to take me across the border and let me go.

"We stopped at the Mexican Customs on the Mexican side of the bridge, across the Rio Grande marking the border. No examination was made of my baggage and then we waited around in the car for about ten minutes. Julio returned and we started onward. When we reached the bridge, which as heretofore stated marks the boundary between the U.S.A. and Mexico, our car was flagged. We stopped and the front door opened. A man entered with a badge in his hand and stated that he was a United States agent and he remained in the car. When we arrived at the United States Customs I was directed to sign a card, arrested after they searched my baggage and myself. They handcuffed me and placed me in jail where I remained for five days, after which time I was taken to New York City."

I might add, I ommitted to say that here in Laredo, he waived extradition to come to New York.

The Court: Why didn't you submit that to the jury?

Mr. Phillips: I beg your pardon?

The Court: Why didn't you submit that to the jury?

[fol. 1215] Mr. Phillips: Now, just a moment. I will answer that, of course.

The Court: Answer it right now.

Mr. Phillips: I am coming to that.

The Court: Would you answer it right now?

Mr. Phillips: Am I right in saying——

The Court: Answer it now, Mr. Phillips.

Mr. Phillips: You want me to answer it first?

The Court: Yes.

Mr. Phillips: Well, in order to answer that, we would have to place Sobell on the witness stand. We had already virtually—at that time, I think it was still in dispute. I took the position that we ought to put him on the witness stand. My colleague took a contrary position. We discussed that pro and con until almost the last day of the trial, when he came in and told you in the courtroom there that we had decided to do otherwise. I yielded to the superior experience in criminal trials of my colleague, Mr. Kuntz. I still believe he was right.

Without that flight, there is absolutely no case whatsoever.

The Court: Well, I don't agree with you.

Mr. Phillips: Well your Honor——

The Court: Do you remember, I put it very squarely [fol. 2416] to the jury, "If you do not believe Elitcher, you must acquit"?

Mr. Phillips: Your Honor has unquestionably disagreed on that theory all the way through, and up to the present moment and for some time after this your Honor's disagreement is controlling, so I am not disputing that for a moment.

The Court: Well, all right.

Mr. Phillips: But I say this, and I will tell you right now that Mr. Saypol in his summation clinched my argument that there was no conspiracy of the kind he tried to show. You remember what I thought at the time a rather clever illustration about the wheel, with Rosenberg in the center as the hub and the spokes coming over here. I have taken the trouble to draw that kind of wheel, and here we have Rosenberg in the center. A.B.R. Let us say "B" is who? Sobell. "A" is Elitcher. Elitcher gives information to "R". Now here is another spoke (indicating). "C" gives information to "D" and "D" gives it to "R". Would you say that "C", "D" and "A" are in the same conspiracy? Of course not. His own illustration was conclusive proof of the incorrectness of a conspiracy.

However, if I thought I had the eloquence and the persuasive power to change your Honor's mind at this very [fol. 2417] moment I would continue still further. To me it is so clear that the case we have been trying is not a

case in which Sobell is in the slightest degree involved, but I sometimes marvel that it is not as clear as the noon day sun to anybody else to whom I have expressed that.

Too many errors have been made in the course of the world's history. Many judicial errors have been made and some of them fatal, and I invite your Honor to read the book "Convicting The Innocent," by—what is the man's name—Burchard. It is a very remarkable book and every judge who is going to be on the bench ought to acquire that book as the first reading of his career.

The Court: There is always that problem in every case.

Mr. Phillips: There is always that problem.

The Court: A judge is always concerned with seeing that the innocent are not convicted, just as I am sure, and I want to believe, that the United States Attorney, Mr. Saypol is, and the Government, because when the time comes that they are not interested in protecting the innocent, then we might as well close the courts right down.

Mr. Phillips: Your Honor, there are various kinds of interests. There is the interest of passion. There is the [fol. 2418] interest of lust in passion; there is the interest of patriotism; there is the interest of idealism; there is the interest of filthy lucre. There are all kinds of interests, and the Government's interest in this case was to get Sobell by force, by abduction, by kidnaping, with the cooperation of the Mexican authorities; the United States on one side and the Mexican authorities on the other side, with constant telephone calls between them, and the proof is here —

The Court: Mr. Phillips, the jury has spoken. You and your co-counsel have been eloquent in his defense. You have heard the evidence. He has been tried in the American way. The accuser was on the stand subject to cross-examination, the most exhaustive kind of cross-examination, and the jury has spoken. I believe, I firmly believe that I was as impartial as any human being could possibly be in this trial. I put it squarely to the jury on your client, that if they didn't believe Elitcher they must acquit him.

Mr. Phillips: Right, no doubt about that.

Mr. Saypol: I have an observation.

Mr. Phillips: If your Honor please, does that mean that you may now shut your eyes——

The Court: Well——

Mr. Phillips: Wait a minute, wait a moment. Does that [fol. 2419] mean you may now shut your eyes to the defects, the fatal defects in the prosecution?

The Court: If I thought there was a fatal defect——

Mr. Philips: Just a moment.

The Court: —I would have ruled in your favor in the earlier stages.

Mr. Phillips: Will your Honor accept my affidavit?

The Court: Certainly. Make it a file paper.

Mr. Phillips: Will your Honor give me another minute?

The Court: All right. He has another minute, Mr. Saypol.

Mr. Phillips: Let us understand what I am saying now is not only by way of criticism of the United States authorities; it demands judicial action on the subject of the jurisdiction not of this court only, but of the United States of America on the body of Sobell.

The Court: I get your point.

[fol. 2420] Mr. Saypol: You get what I am saying.

Mr. Phillips: And then the United States of America by these methods secured the body of Sobell, jurisdiction over him by a criminal, illegal, act, and so the United States of America must send Sobell back to the place where they took him from, to deal with him accordingly some time in the future.

The Court: I get your point.

Mr. Phillips: I am not doing this merely to create a scandal and your Honor will now understand my reluctance during the trial in not bringing in this——

The Court: That I will never understand.

Mr. Phillips: Well, may I tell it to you then?

The Court: No, no, I have heard you.

Mr. Phillips: You didn't hear the additional element that was in my mind.

The Court: Let me hear it.

Mr. Phillips: Knowing as I do that Sobell's departure from the United States was not under circumstances of secrecy, I knew that he had bought a ticket in his own name,

I knew that he traveled with his wife and two children undisguised to Mexico by air——

The Court: You didn't even prove that he had left the United States under his own name. You could have called an airline official. You inferred that he did, and I per-
[fol. 2421] mitted you to argue that to the jury.

Mr. Phillips: It wasn't taken in evidence, I understand.

The Court: It is not in evidence.

Mr. Phillips: Some reference was made to it.

The Court: Go ahead.

Mr. Phillips: Very well. Knowing that, if your Honor please, I knew that if the Government will bring that in, it will be up to the Government to explain how he got back. Then I said to myself, if the Government will explain how he got back truthfully, that will end the case.

The Court: Well, when the Government explained how he got back and you didn't like the explanation——

Mr. Phillips: Just a moment, just a moment. Wait a moment. I anticipated—I had a right to anticipate that my Government will not deliver into court spurious evidence in order to avoid an issue of that kind.

The Court: You have no right to make that charge. You have no right to make that charge, Mr. Phillips.

Mr. Phillips: I make it with the full responsibility of what I am saying.

The Court: No, you have no right to make that charge. That witness was examined and cross-examined and the
[fol. 2422] jury believed it was not spurious.

Mr. Phillips: That affidavit makes the charge; I don't.

The Court: You mean your client's affidavit?

Mr. Phillips: And I tell you that that affidavit I believe to be——

The Court: Well, I would rather have you characterize it as your client's charge; I would rather not have it come from you.

Mr. Phillips: If your Honor please, I am an advocate. I don't know these facts. Where do I receive them from? Somebody tells me them.

The Court: Mr. Phillips, I have your point.

Mr. Phillips: And I would like your Honor, in my opinion, what I am going to request is a very reasonable re-

quest to make: It is my suggestion that further proceedings in the matter of Sobell be held in abeyance by your Honor until you have had an opportunity to investigate the statements made in this affidavit that I have just handed to you. After all, they may be all false, every word that is in there I don't know; I am not sponsoring anything. I hope, how I wish, and how I do hope that what is in that affidavit is not true; I do hope for the honor of my country that the statements in that affidavit are false.

[fol. 2423] The Court: Very well, Mr. Phillips.

Mr. Phillips: But they are not false, and if your Honor finds that they are not false——

Mr. Saypol: There is something I would like to say.

The Court: I will hear Mr. Saypol.

Mr. Saypol: I feel that there is something I should say to complete the record. I submit to your Honor that the verity of what counsel has argued is as feigned as Sobell's defense, as counsel's seeming vehemence, as the nature of the defense, and the course that was pursued in an attack on the prosecutor. Two things I will concede: Mr. Phillips' statement that he is not familiar with the facts, and that is evident from my own experience in Mexico City where a witness for the airlines told me that this defendant and his wife had cashed in the return portions of their tickets to come back to this country. It was proven on the stand in the testimony of de Los Rios that this defendant was fleeing. de Los Rios testified that this defendnat told him he was fleeing from the American military authorities. He gave that deceptive reason that he didn't want to go into another war, although the proof was that he had never been in a war before. This very affidavit contains a falsehood in the statement that there was exhibited amongst other things to the Mexican authorities visas. Counsel ought to [fol. 2424] know that his client never went into Mexico with a visa. It is evident in the failure to disclose that when this defendant arrived at Laredo, and was taken into custody by American agents, that arrest was effected pursuant to a lawful warrant. It is evident in the fact that throughout this trial there sat in this courtroom the wife of the defendant, as to whom the affidavit states that she was present and we know that she was present from the time of

the arrest until the time the final act of deportation was effected at Laredo, and yet, not a word of testimony was heard from Mrs. Sobell.

[fol. 2425] The Court: I think I have enough.

Mr. Saypol: The whole affidavit portrays certainly that this defendant was not honorably escorted from Mexico but that literally he was kicked out as a deportee.

As a matter of law it has been held in the Dixon case in 73 Fed. Supp. that this Court will not be concerned with the circumstances under which a defendant before the Court is brought into the jurisdiction from a foreign place.

I submit that there is no merit to the motion. I submit that counsel even without full and frank disclosure by the defendant must have been fully aware of any facts concerning this subject.

The motion should be denied.

The Court: I don't think there is any merit whatsoever to the motion and I shall deny it.

Mr. Saypol: On the case now before the Court the Government first moves to adjourn the sentence of David Greenglass until tomorrow afternoon at 2 o'clock.

The Court: Is there anybody here on his behalf?

Mr. Fabricant: Your Honor, I believe Mr. Rogge is outside, and I don't believe that he knew that this motion was going to be made at this time.

Mr. Saypol: Indeed he did because I spoke with him on the telephone last night.

[fol. 2426] Mr. Fabricant: I don't think he knew that it was going to be made at this time.

The Court: Is he here in the building?

Mr. Fabricant: He is here in the building. I would like permission to call him.

The Court: Let us proceed with the rest of the sentences.

MOTION RE SENTENCES OF DEFENDANTS OTHER THAN ROSENBERGS AND SOBELL

Mr. Saypol: The Government moves the sentences of the remaining defendants who stand convicted.

The Court: Very well.

The Clerk: For sentence, Julius Rosenberg and Ethel Rosenberg.

Mr. E. H. Bloch: If the Court please, before we go through the proceedings usually taken in sentence, may we approach the bench?

The Court: Yes.

Mr. E. H. Bloch: I would like to discuss the matter with you. It has no relevancy to the sentence.

(Discussion at the bench between Court and counsel, off the record.)

The Court: All right, proceed.

Mr. Saypol: I have some observations I would like to make if the Court will allow me.

I consider it needless to review the evidence in this case. [fol. 2427] The Court has kept itself so fully informed and the charge of the Court is plain proof——

The Court: I think the defendants might be seated. Move some chairs over here until the actual sentence.

Mr. Saypol: The charge of the Court furnishes ample proof of its familiarity with the facts both as to the offense and as to the personal backgrounds of these defendants.

Chief Judge Learned Hand of our Court of Appeals in his opinion in United States v. Dennis in the course of discussing the clear and present danger doctrine reviewed present world conditions in these words, with this warning: "and we shall be silly dupes if we forget that again and again in the past 30 years, just such preparations in other countries have aided to supplant existing governments, when the time was right."

With that profound observation as a setting, I turn to various provisions in the Federal statutes which deal with the imposition of punishment, such as is provided in the statute before the Court.

In the case of murder, for instance, it is provided that whoever is guilty shall suffer death unless the jury qualifies its verdict by adding thereto the words without capital punishment, in which event he shall be sentenced, says the [fol. 2428] statute, to imprisonment for life.

In the case of rape, it is provided that a defendant shall suffer death or imprisonment for any term of years or for life.

In the case of kidnaping a convicted defendant shall be punished, one, by death if the verdict of the jury shall so recommend, or two, by imprisonment for any term of years, or for life if the death penalty is not imposed.

In the case of treason whoever is guilty of treason shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000.

The penalty for conspiracy to commit espionage, the crime for which these defendants stand convicted, since the first enactment of the law, particularly since 1917, provides that a convicted defendant shall be imprisoned not more than 20 years, but follows this proviso:

> "(b) whoever violates this law in time of war shall be punished by death or by imprisonment for not more than 30 years."

That is the applicable provision here.

Your Honor may observe now the two instances in which action by the jury may qualify the verdict. In the one in- [fol. 2429] stance, in the case of murder, in effect, the jury may recommend leniency. In the case of kidnaping, contrarywise, the jury may fix the grave penalty of death. Otherwise it is the sole prerogative of the Court.

The sentence to be imposed lies solely within the discretion of the trial court. The prosecutor's function is fulfilled when he has completed the case and the verdict of the jury rendered.

My statement reflects the views of the Department of Justice and the Attorney General and is a general statement of the background, of the import of the acts of these defendants and affects the question of how grave is the offense. In speaking, I do so with no sense of ominscience or of greater sagacity; nor in any spirit of malice, hatred or revenge.

The law under which the defendants were tried specifically omits reference to espionage in favor of a nation with whom this country is at war. It is clear that such an omission was conscious. The framers of the law understood the lesson of history that the uneasy ally of convenience of one day can really be preparing to be tomorrow's enemy. The Nazi-Soviet Pact of August, 1939, which un-

loosed the flood gates of World War II, is still fresh in our memory. What sort of allies were the Nazis and Russians [fol. 2430] at that time? When the Nazis attacked Russia, did Russia become an ally of ours by choice? The accidents of war indeed create strange and temporary bedfellows. The United States Supreme Court in the Gorin case, referring to the statute before the Court, said "No distinction is made between friend *of* enemy. Unhappily, the status of a foreign government may change."

World War II was hardly in its last stages when the question of whether who was really our ally and who perhaps might be the enemy, was already merging into the greatest issue of our age, namely, the struggle of our free society for survival against the vast forces of communist totalitarianism. It has been proven that these defendants were the agents of antagonistic forces which might well be preparing to overwhelm us. It is the elementary duty of a government to defend itself and its institutions. A society which does not defend itself is not worthy of survival. The espionage statute is designed as a weapon of defense of our freedom and thus it should be applied.

I have hesitated to translate these matters into a direct issue of life and death. It would be delusion indeed to believe that the war in Korea is anything but a war inspired by Russia. It is not an ad hominem appeal to suggest that [fol. 2431] it is inferable that young American lives are being daily sacrificed in Korea in defense of our way of life. These defendants gave their allegiance to forces which now are proven is allied to the real enemy in that fight. They used methods of espionage which traditionally called for severe punishment. The secrets they sought and secured were of immeasurable importance and significance. How could the life of a single individual engaged in such treasonable activities be weighed against the life of a single American soldier fighting in a distant land. The defendants were dedicated to the service of a system in which lives, their lives, are but ciphers. In terms of human life, these defendants have affected the lives, and perhaps the freedom, of whole generations of mankind. Any consideration for their personal interests necessarily in-

volves a hardening of the heart toward the fate and suffering of countless other human beings.

In the light of these considerations, is there room for compassion or mercy? Is there not an absolute duty to exercise the only weapons of defense available to our free judicial system which is here charged with acting in defense of our society? Leniency would be merely an invitation to increased activity by those dedicated to the concept that compassion is decadent and mercy an indication of weakness.

[fol. 2432] I point out to your Honor that the statute in question here in its applicable provisions contains two maxima, the death penalty and the maximum of not more than thirty years.

In the light of what I have said about other provisions of the law dealing with the imposition of the maximum penalty, frankly I am confused, as I think everybody else is, by the Congressional reasoning for not permitting the imposition of a maximum prison term of more than thirty years. But be that as it may, I am bound, as is the Court, by the provisons of law.

In that setting, considering the nature of the crime and the complete familiarity of the Court with every aspect of the case, I submit the matter for the consideration of the Court, unless the Court desires to hear me further.

The Court: Mr. Bloch.

Mr. E. H. Bloch: If the Court please, it has been a very heavy responsibility on the part of all those who have been connected with this case to see that the administration of justice was properly carried out, and that burden was carried by the Court, that burden was carried by the prosecution, and that burden fell especially upon the shoulders of defense counsel, and I believe that in this posture of the case, in retrospect, we can all say that we attempted to have this case tried as we expect criminal cases to be tried in [fol. 2433] this country; we tried to keep out extraneous issues; we tried to conduct ourselves as lawyers, and I know that the Court conducted itself as an American judge.

I think all of the defense counsel were doubly aware of the burden and heavy responsibility that were put upon their shoulders in this case, not only because of the serious

crime charged, but also the serious consequences that would flow from a conviction. But specifically because this case has become a celebrated case, and long before we walked into this courtroom it had been the subject of report and comment throughout the press of this country as well as the press of the entire world, I hope your Honor will understand that at this time as an officer of the Court I am bound by the jury's verdict, and I am therefore circumscribed in what I say to the Court, but indeed I would be remiss in my duty if I were not to tell the Court and the entire world that my clients, Julius Rosenberg and Ethel Rosenberg, have always maintained their innocence; they still maintain their innocence. And they have informed me no matter what, they will always maintain their innocence.

That makes my task here at this moment much more difficult. If these defendants came in crying *mea culpa* and showed that routine display of penitence that so many [fol. 2434] criminal defendants usually demonstrate to the Court on sentence, I could see things properly which would act as mitigation and which would move the Court, at least, in considering that state of mind in the imposition of sentence. I cannot say that. I am enjoined from saying that. I am saying to the Court also for what it is worth, as a personality, as an individual divorced from my responsibilities and duties as an attorney and officer of the Court, I have believed in my clients' innocence, I still believe in their innocence, and so far as I am concerned, I feel it my duty to continue as I have in the past to do everything to try to reveal the truth and the whole truth so that we can all say when this case is finally laid at rest at some time, everything has been done to see that proper justice has been effected.

Now notwithstanding these limitations and these circumscriptions under which I labor and suffer I would indeed be remiss in my duty to my clients and as an officer of the Court if I did not impart to the Court what I consider to be two salient features which I ask the Court to consider before it actually determines the sentence to be meted out to these defendants.

The evidence discloses in support of the charge that these defendants in the latter part of 1944 and during the year

1945 transmitted information relating to the defense of the [fol. 2435] United States to the Soviet Union, and the information which was charged as having been transmitted was information relating to the secret of the atom bomb. And I believe that it is because the atom bomb or some of the secrets was the subject matter of transmittal that this case assumes the importance that it did and does.

Now I would like to say to the Court that these acts were allegedly committeed in 1944 and 1945, and before I say what I am going to say, I want to say to the Court that I did not want to make a political speech and I am not going to make a political speech; in fact, I wanted to keep politics out of this case and I think with the Court's aid we have been able to keep it out up to now, but Mr. Saypol, and this is not by way of criticism, in his statement to the Court just now has introduced political considerations of a very weighty character, and I believe that I have the right to counter what Mr. Saypol has said about the gravity of this thing. The defendants are to be judged in this case not by what they may have intended today but what they may have intended in 1944 and 1945, and the quality of their act is to be taken if you will retrospectively and at that time, your Honor, the Soviet Union and the United States were allies, and you and I, as well as many other citizens of this country, as well as peoples all over the world, read the state-[fol. 2435a] ments of the greatest statesmen in the world at that time, in which they remarked that the Soviet Union was to be helped, was to be trusted, and was to be taken as a full-fledged ally.

[fol. 2436] I am not going to read excerpts of statements made by Winston Churchill or Franklin Delano Roosevelt or any of the great statemen of the Western World. I think that what I am saying can be accepted and will be accepted by every intelligent person who has read history and who remembers.

Now, I submit that to your Honor, because both in a quantitative and qualitative sense the acts of the defendant or defendants in a crime of this kind are vastly different, both in terms of motivation, motive and intent, when viewed as of 1944 or 1945, in contrast to how we may view a de-

fendant's act, considering the international situation, if viewed today.

I also would like to impress upon the Court that there has been no evidence here and no charge has ever been made that these defendants were venal or mercenary or that they did any of the acts charged in the indictment and substantiated, according to the prosecution, and to the jury's verdict at the time of trial, for money.

Now, your Honor, I would like the Court to ask itself this question—and I have to present a hypothet-cal state of facts: Assuming that the United States Government had found out in 1945 what they found out years later and which impelled them to bring these charges; one, would these defendants find themselves in a criminal court? And [fol. 2437] if, two, they found themselves as defendants, would there be the hullaballoo and hysteria which has accompanied the progress of this criminal procedure?

The Court: You overlooked one very salient feature, and that is that their activities didn't cease in 1945, but that there was evidence in the case of continued activity in espionage right on down, even during a period when it was then apparent to everybody that we were now dealing with a hostile nation.

Mr. E. H. Bloch: If the Court please, my recollection of the evidence is—and I am going to accept 1950, because all the evidence relating to 1950 dealt with flight——

The Court: But there was evidence, for example, in 1948, with Elitcher.

Mr. E. H. Bloch: 1948 was the later year. But in substance, your Honor, in substance this case is predicated upon the transmission of this A-bomb information in 1944 and 1945.

Now, I press that upon the Court, because I think it is an important element that should go into the deliberations of the Court in the imposition of sentence. I am not saying that when a man commits a criminal act he is to be condoned or his actions are to be condoned or he is to be excused because he lacks prescience and foresight of what the turns [fol. 2438] of history might bring about. I am not saying that at all. But I do say that it would be unduly harsh and unduly severe and unduly rigorous if an ideological ap-

proach, inspired by motives and feelings that were prevalent amongst great sections of the American population in 1944 and 1945, were translated, transmuted and transformed into something as heinous as Mr. Saypol has just stated and represented to the Court.

Now, I said, your Honor, that this case has assumed importance because of the element of the secrecy of the A-bomb. I suspect that when the average person hears "A-bomb" he shudders, he is in dread, he is in terror. I think much of the conscious or unconscious hysteria, subjectively speaking amongst people is due to the uncertainties as to whether or not they are going to live or die precisely because of the destructive potentialities of the A-bomb.

But sometimes, your Honor, a myth arises and sometimes, just as we try to elevate a person to dignity, we fall into hero worship, which distorts the person and his contributions out of all sane context. So the atom bomb has been so magnified and intensified that I think it is high time, and I think it is proper here, in terms of mitigation, to show to the Court, arguendo, but not conceding that these defendants [fol. 2439] did what they were accused of doing, that it is not the horrible thing that is represented to the Court.

Now, that may seem like a very startling statement, but your Honor, when I want to know the law I will come to you as an American judge, and when I want to know the scientific facts—and this is with all due deference in respect to Mr. Saypol—I will not come to Mr. Saypol but I will come to people like Dr. Oppenheimer and Dr. Urey and the scientists who work on the A-bomb. I think that is a fair statement, your Honor.

With your permission, your Honor, I would just like to read you two paragraphs from an article in Volume 56 of the Yale Law Journal, written by a former counsel of the Atomic Energy Commission, in which he reviews the history of the Espionage Act and the Atomic Energy Act, and in which he sets forth the prevailing view of scientists about what the A-bomb is, what it can do, and what kind of reliance can be placed upon it; and I say these things, your Honor, in context of the gravity of the offense and solely for that reason.

The Court: Well, I don't think that is a sound argument, because if you are going to say to me that "with the dropping of one bomb you can't conquer a nation," or "with the dropping of one bomb you can't kill ten million, but you may kill a hundred thousand, therefore, it isn't so [fol. 2440] grave," I must say that that is not a good argument.

Mr. E. H. Bloch: I am not going to say that. I don't intend to say that. But I will say to the Court that I think the Court would orientate its thinking along different lines if the transmission of the secret information here involved, some little piece of mechanism which, technically, under the statute, constituted a violation, but which could not bring about the destructive results. There is a difference, qualitatively, between one kind of article that is transmitted and another. No, I am not going to say that, your Honor, because I think it would be asinine, and I wouldn't stultify my intelligence or your intelligence if I would say that, but I would like to read you this.

The Court: All right, you may read it.

Mr. E. H. Bloch: And I may say, because I am not going to bombard your Honor with quotations from Dr. Urey or Dr. Oppenheimer, but I represent to the Court that what is said here is a fair resume or pithy concretization of their thoughts.

The Court: All right, read it, Mr. Bloch.

Mr. E. H. Bloch: (Reading):

"the general principles underlying all processes are likely to be widely known being derived usually from some discovery of basic science. For example, the successful gase-[fol. 2441] ous diffusion method of separating U-235 was based on identical principles enunciated by Lord Rayleigh as early as 1896. Thus, it is only the latest improvement or modification of an existing technique which can be held in camera, and then only for an indeterminate but usually brief period. Moreover, there is no likelihood whatever, with all our preeminence in technology, that the disparity between the level of our technical competence and that of other industrialized countries—at least half a dozen could be named (e.g. Great Britain, Canada, Russia, France, Sweden, Czecho-Slovakia)—is such that the latter would be

more than, at most, a few years behind us. Indeed, there is abundant evidence that other nations frequently develop technological methods and process distinctly superior to ours in a variety of fields.

"Even wholly new processes are likely to be already known or simultaneously discovered in other countries. For intellectual progress, especially in the sciences, is more or less uniform in countries which for generations have shared the same cultural climate. Only a small fragment of our scientific ideas are likely to be original, and that [fol. 2442] fragment is likely to be of little value by itself. One would not assume that biological evolution functions differently in Des Moines, Copenhagen and Moscow. The likelihood of marked differences in the evolution of scientific thought corresponding to geographical differences is equally small. Doubtless, some nations show special aptitudes in one field, some in another, but the community of science has long been international and the objects of its search are universal.

"Finally, the cosmopolitan character of the atomic energy project should not be forgotten. This work was the product of the scientific brains of several of the allied nations, and participating scientists inevitably acquired a considerable measure of the specialized and technical knowledge required to produce the bomb. It must be assumed that any 'secrets' known by these scientists, many of whom have returned to their own countries, have been disclosed to fellow-workers in nuclear physics in other parts of the world."

There is just one more paragraph.

The Court: None of them had returned in 1944 and 1945.

Mr. E. H. Bloch: That is true. The point I am trying [fol. 2442a] to make to the Court is that it was inevitable, just as the United States, our country, was the first to develop the know-how of the atomic bomb, because of our preeminence in technology.

[fol. 2443] The Court: Are you arguing, Mr. Bloch, that because it was inevitable that Russia would eventually be able to develop the atomic bomb, therefore it was perfectly proper for any American citizen to turn over any information which would help them develop it much sooner?

Mr. E. H. Bloch: I don't make any such assertion. I

say this: That it is wrong and it is criminal, under the Espionage Act, for any American to transmit information to any foreign power, whether it be Russia or England or France or any country that we can name. I do say, however, that let's not believe, as seems to be current in American thinking, that our entire security depends upon the atom bomb, a thought expressed by Mr. Saypol when he said that our boys are dying in Korea because of the Rosenbergs. I think that is a huge exaggeration.

The Court: I don't quite go along with the fact that it is that huge.

Mr. E. H. Bloch: I say that there is a myth about the monopoly of the bomb.

The Court: I think what it does do very definitely is that it changes a bit the respective powers of the nations, whether their political powers or otherwise, but the possession of the missile certainly does play a very important part in power politics.

[fol. 2444] Mr. E. H. Bloch: I say this, your Honor, if we are going to talk about power politics—I didn't want to say this, but I am going to say it—I hope that any sentence of this Court will not exacerbate detentions that exist in the world today. I believe that we can be more hopeful at this moment in the arena of international relations than ever before. We find strenuous efforts on the part of the greatest statesmen throughout the world to bring the Soviet Union and the United States into some orbit of understanding; and today, as in the last few weeks, our best brains are sitting with the best brains of the Soviet Union, in order to prepare an agenda to discuss outstanding differences.

Now, certainly that is not my business in this case to talk about too much, except as it impinges upon how your sentence may affect relations, precisely because this case is a celebrated case, and any sentence that your Honor imposes will be radioed throughout the world within three minutes and may be contstrude in a political way, when I know your Honor is merely trying to discharge his duty as a Court and impose a legal sentence.

The Court: I also have a duty, as I see it, whatever my sentence will be, to the American people, and I feel that duty very humbly and very definitely on my shoulders this morning.

[fol. 2445] Mr. E. H. Bloch: I realize the Court has a terrible responsibility, and I suppose it is the duty of the lawyers in this case, and I mean the prosecution as well as the defense, to try to aid the Court. How much we can aid the Court, I don't know. What I say to the Court may be of some help and may not be of some help, but as an officer of the Court, I am trying to lay before the Court certain factors, which I believe should enter into your deliberations.

I would just like to add one or two things, your Honor, and I am through:

In preparing for this trial, I ordered a certified copy of the sentence of Harry Gold, and in that transcript appears a very, very lengthy speech on behalf of that defendant by Mr. Hamilton, a member of the bar of the State of Pennsylvania, and, I understand, one of the most eminent practitioners in that part of the country; and he saved me a lot of trouble in research, in terms of finding analogies, which though not binding on the Court, because each case is separate and distinct, nevertheless may serve as guides, and I say to the Court that we have had situations in the United States within the last few years, where people like Tokyo Rose and Axis Sally, who were convicted of treason and who were aiding our enemy, Germany, during our war [fol. 2446] against Germany, I find that these people received terms of 10 to 15 years; and so I must say that I was extremely shocked, extremely shocked, despite everything that I have read in the newspapers, to hear Mr. Saypol ask for the severe penalty that he requested the Court to impose upon these defendants.

You know, your Honor, history turns. The Soviet Union was our ally in a fight against the common foe. Today, though we are not at war with the Soviet Union, the Soviet Union is regarded as an enemy to the United States. Who knows that but tomorrow the Soviet Union and the United States may not find some accord and find the basis for resolving their differences, so that the peoples of the world may be able to sit back a little bit and get that peace to which we all aspire.

I say to the Court that you should take all of the things I have said in consideration here. I am not going to review

the history of my clients' lives. Your Honor heard it from the witness stand and it would be a pure duplication.

I say this: One, my clients have stood up with that kind of courage that can only come from persons that are convinced of their innocence; and, number two, that the worst that can be said about them is that, idealogically, during the years when they were allied with the Soviet Union, they were extremely sympathetic to the Soviet Union.

[fol. 2447] Your Honor, I know you haven't been on the bench very long, but I know you have had a lot of experience in criminal law as a prosecutor, and I assume, a modicum of experience as a judge in criminal trials. I am going to ask you to say yourself, in your own conscience, your Honor, whether or not these people are the type of people that ordinarily come before you in a criminal case.

The Court: Have you made your reply on behalf of both defendants, Mr. Bloch?

Mr. E. H. Bloch: I am through, your Honor.

The Court: Is there anything defendants wish to say?

Defendant Julius Rosenberg: No, sir.

The Court: Do you care to say anything?

Defendant Ethel Rosenberg: No, sir.

SENTENCES

The Court: Because of the seriousness of this case and the lack of precedence, I have refrained from asking the Government for a recommendation. The responsibility is so great that I believe that the Court alone should assume this responsibility.

In view of the importance of the sentences I am about to impose, I believe it is my duty to give some explanation respecting them.

At the outset, I would like to say a few words about the law under which these defendants are about to be sen-

[fol. 2448] tenced.

It provides for the following punishment: If the espionage or the conspiracy to commit espionage is committed during the time of war, the punishment might be death or imprisonment for not more than 30 years. If the espionage or conspiracy to commit espionage is committed at any other time the maximum punishment is imprisonment for not more than 20 years.

This section, under which the defendants were prosecuted and convicted, was enacted in 1917, at which time the Russian international spy ring did not present the threat to all of us which it does *not*. Today, we know, if we believe the evidence, and the jury has found that the evidence is true, that it is a well-organized, well-directed ring, with tentacles which reach into the most vital places.

The incongruent penal provisions of the statute are spotlighted by the 20-year maximum imprisonment provision for commission of the offense of espionage during peacetime. I ask that some thought be given to that for a moment, for it most likely means that even spys are successful in the year 1951 in delivery to Russia or any foreign power our secrets concerning the newer type atom bombs, or even the H-bomb, the maximum punishment that any Court could impose in that situation would be 20 years. [fol. 2449] I, therefore, say that it is time for Congress to reexamine the penal provisions of the espionage statute.

In the case before me the conspiracy as alleged and proven commenced on or about June 6, 1944 at which time the country was at war. Overt acts were committed during the period of actual hostilities. Therefore, the maximum penalty is death or imprisonment for not more than 30 years.

Espionage, as viewed here today, does not reflect the courage of a Nathan Hale, risking his life in the service of his own country. It is rather a sordid, dirty work,—however idealistic are the rationalizations of the persons who engaged in it,—with but one paramount theme, the betrayal of one's own country.

Citizens of this country who betray their fellow-countrymen can be under none of the delusions about the benignity of Soviet power that they might have been prior to World War II. The nature of Russian terrorism is now self-evident. Idealism as a rationale dissolves.

The issue of punishment in this case is presented in a unique framework of history. It is so difficult to make people realize that this country is engaged in a life and death struggle with a completely different system. This [fol. 2450] struggle is not only manifested externally between these two forces but this case indicates quite clearly

that it also involves the employment by the enemy of secret as well as overt outspoken forces among our own people. All of our democratic institutions are, therefore, directly involved in this great conflict. I believe that never at any time in our history were we ever confronted to the same degree that we are today with such a challenge to our very existence. The atom bomb was unknown when the espionage statute was drafted. I emphasize this because we must realize that we are dealing with a missile of destruction which can wipe out millions of Americans.

The competitive advantage held by the United States in super-weapons has put a premium on the services of a new school of spies—the homegrown variety that places allegiance to a foreign power before loyalty to the United States. The punishment to be meted out in this case must therefore serve the maximum interest for the preservation of our society against these traitors in our midst.

It is ironic that the very country which these defendants betrayed and sought to destroy placed every safeguard around them for obtaining a fair and impartial trial, a trial which consumed three weeks in this court. I recall the defendant Julius Rosenberg testifying that our Ameri- [fol. 2451] can system of jurisprudence met with his approval and was preferred over Russian justice. Even the defendants realize,—by this admission,—that this type of trial would not have been afforded to them in Russia. Certainly, to a Russian national accused of a conspiracy to destroy Russia not one day would have been consumed in a trial. It is to America's credit that it took the pains and exerted the effort which it did in the trial of these defendants. Yet, they made a choice of devoting themselves to the Russian ideology of denial of God, denial of the sanctity of the individual and aggression against free men everywhere instead of serving the cause of liberty and freedom.

I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. The immediate family is brought to grief and when justice is meted out the chapter is closed. But in your case, I believe your conduct in putting into the hands of the Russians the

A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions [fol. 2452] more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country. No one can say that we do not live in a constant state of tension. We have evidence of your treachery all around us every day—for the civilian defense activities throughout the nation are aimed at preparing us for an atom bomb attack.

Nor can it be said in mitigation of the offense that the power which set the conspiracy in motion and profited from it was not openly hostile to the United States at the time of the conspiracy. If this was your excuse the error of your ways in setting yourselves above our properly constituted authorities and the decision of those authorities not to share the information with Russia must now be obvious.

The defendants are American citizens. They profited from our system of free higher education. I also assume that the basic Marxist goal of world revolution and the destruction of capitalism was well known to the defendants, if in fact not subscribed to by them, when they passed what they knew was this nation's most deadly and closely guarded secret weapon to Soviet agents.

In the light of this, I can only conclude that the defend- [fol. 2453] ants entered into this most serious conspiracy against their country with full realization of its implications. The statute of which the defendants at the bar stand convicted is clear. I have previously stated my view that the verdict of guilty was amply justified by the evidence. In the light of the circumstances, I feel that I must pass such sentence upon the principles in this diabolical conspiracy to destroy a God-fearing nation, which will demonstrate with finality that this nation's security must remain inviolate; that traffic in military secrets, whether promoted by slavish devotion to a foreign ideology or by a desire for monetary gains must cease.

The evidence indicated quite clearly that Julius Rosenberg was the prime mover in this conspiracy. However,

let no mistake be made about the role which his wife, Ethel Rosenberg, played in this conspiracy. Instead of deterring him from pursuing his ignoble cause, she encouraged and assisted the cause. She was a mature woman,—almost three years older than her husband and almost seven years older than her younger brother. She was a full-fledged partner in this crime.

Indeed the defendants Julius and Ethel Rosenberg placed their devotion to their cause above their own personal safety and were conscious that they were sacrificing their [fol. 2454] own children, should their misdeeds be detected —all of which did not deter them from pursuing their course. Love for their cause dominated their lives—it was even greater than their love for their children.

What I am about to say is not easy for me. I have deliberated for hours, days and nights. I have carefully weighed the evidence. Every nerve, every fibre of my body has been taxed. I am just as human as are the people who have given me the power to impose sentence. I am convinced beyond any doubt of your guilt. I have searched the records—I have searched my conscience—to find some reason for mercy—for it is only human to be merciful and it is natural to try to spare lives. I am convinced, however, that I would violate the solemn and sacred trust that the people of this land have placed in my hands were I to show leniency to the defendants Rosenberg.

It is not in my power, Julius and Ethel Rosenberg, to forgive you. Only the Lord can find mercy for what you have done.

The sentence of the Court upon Julius and Ethel Rosenberg is, for the crime for which you have been convicted, you are hereby sentenced to the punishment of death, and it is ordered upon some day within the week beginning with [fol. 2455] Monday, May 21st, you shall be executed according to law.

We will take a short recess.

(Short recess.)

The Court: Mr. Saypol, do you want to take up the matter of punishment of the defendant Greenglass?

Mr. Saypol: If it is agreeable, I have made a statement to the Court and I have suggested that the sentence of

Greenglass be adjourned to tomorrow afternoon at 2 o'clock.

Mr. Rogge: If your Honor please, as counsel for David Greenglass, I am requested that it be adjourned to next week, and I will tell you why. I should like to have an opportunity, as counsel—I think it is my duty—to prepare a plea for your Honor's consideration in passing sentence, which will involve, not only matters which have come to your Honor's knowledge, but additional matters. I did not learn of the fact that the sentencing in this case had been set for today, until I read it in the New York Times, in Washington, D. C. on Sunday, when I was there preparing for trial of a case that went on trial on Monday.

The Court: I said here when the verdict came back that I would sentence all defendants Thursday morning, April 5th.

[fol. 2456] Mr. Rogge: If your Honor please, I did not have notification until Sunday. I did not get back to this city until last evening. I represent a witness who has been subpoenaed for 2 o'clock this afternoon before the Sub-Committee on Internal Security of the Committee on the Judiciary, known as the "McCarran Committee," which is set for 2 o'clock in this city, this afternoon, a hearing that I am sure will take all afternoon and may go until tomorrow, and I would like a day's time in which to confer with David Greenglass and his wife, Ruth, in order to prepare my plea before your Honor. I think, as his counsel, it is my duty to do that and I can't get at it until Monday of this next week.

[fol. 2457] The Court: Mr. Rogge, I would like to accommodate you, but I just feel that I can't. I want to dispose of this case. I would have preferred to dispose of the Greenglass sentence today, but I understand very well there would have been certain situations involved, that with his presence in court at the time the other defendants were here, that would inflict upon him more punishment than should be inflicted, so I decided to have it go over for a day. But I want to dispose of it. I believe, in the interests of your client, it should be disposed of. I am sure that you are fully familiar with the facts, because you have lived with his case now for almost a year, and I am going to set it for

tomorrow afternoon, at 2 o'clock, and I almost think that it is of such importance that perhaps the Committee, before which you are supposed to make an appearance, might consider that you want to do some work on this and perhaps postpone the hearing. I don't suggest it. I just throw that out as a thought, but I do think that it is of such importance that I would like to dispose of it tomorrow.

Mr. Rogge: Well, here is my situation on that: They have apparently had a sub-committee meeting here for this afternoon. I am prepared to go ahead in that case and I don't like to say to the sub-committee, "Will you come next week," because I assume they have come up here [fol. 2458] from Washington for this purpose.

The Court: I understand that. I should say, it doesn't require much work on your behalf to be ready tomorrow. I don't think that any long statement should be made, because no one knows better than I do the part that Mr. Greenglass played in this case. I saw the witness on the stand, I heard him testify. I know his background. There is very little more that can be added.

Mr. Rogge: Well, I wanted to stress some things that hadn't been stressed, his youth, some of his fuzzy thinking.

The Court: I think you can do that.

Mr. Rogge: The courage that was involved in not committing the second error. I wanted to explain those a little to your Honor. I know you have gotton part of the picture, but I thought there was more of it which I should present to you.

The Court: I think you can go right ahead and do it. But they are things I have in mind. I know it required a great deal of courage. The jury believed it. I believed it. I thought he was telling a credible story. It is a most unusual situation.

Mr. Rogge: It is the toughest I have ever been in, Judge.

The Court: A brother testifying against his sister.

[fol. 2459] I suppose that he did a lot of soul-searching and came to the conclusion that he was doing to what is bigger than his relationship with his sister.

Mr. Rogge: He made up his mind that he was not going to commit a second error, and I want to explain—I can see that your Honor is pretty familiar with the picture.

The Court: I am prepared to go ahead with it tomorrow. I am going to set it at tomorrow at 2 o'clock.

Mr. Rogge: Thank you, your Honor.

The Clerk: For sentence, Morton Sobell.

Mr. Phillips: Your Honor, I would like to say a word or two.

The Court: Is there anything the Government wants to say?

Mr. Saypol: I think, equally, the Court is familiar with the facts, so that it requires no discourse on my part.

The Court: All right.

Mr. Phillips: There are one or two items of fact that I wish to draw to the Court's attention for consideration in imposing a penalty in this case on Morton Sobell.

In the first place I ask your Honor to note that there is no testimony in the case that Sobell did actually transmit any information to be transmitted to any foreign power; [fol. 2460] at best, or at worst, there might be a scintilla to indicate that he was agreeable to do so or that he arranged to do so. I don't admit that, that the testimony if viewed in the light of the adjoining testimony really points in that direction, but that is the worst that anybody can hold in this case against Sobel.

In the indictment no overt act is charged against him; scarcely any has been proved in the course of the trial, and certainly none in connection with the type of information, namely, the transmission of the secret of the atom bomb is present throughout the case as chargeable to Sobell.

And finally I want to draw your Honor's attention to the peculiar working of the statute in relation to punishment. You will notice that the statute does not provide for a minimum. The statute says not to exceed thirty years and also not to exceed death. But the main thing is why is the statute worded to leave no minimum? Obviously it is a directive to the Court whose duty it is and obligation, sacred trust, to impose sentence. Now there are degrees of transmission of information. There are degrees of gravity in the transmission of information. There are degrees of gravity as to the nature of the world relationship in the transmission [fol. 2461] of information. In other words, the fact that the statute does not prescribe a minimum is almost like saying to a court, "You have the privilege to impose almost no

sentence, or to let a defendant go on his own recognizance, or such a small sentence, fair." In other words, I do wish your Honor to take into consideration the wording of the statute. If there is any case I can think of of transmission of information to a foreign power on matters relating to the national defense which would point to the exercise by the Court of that very discretion which the language of the statute gives it, it seems to me to be the case of Sobell, and I certainly bespeak for him your Honor's utmost consideration.

The Court: Is there anything the defendant wants to say?

(No response.)

The Court: While I have not the slightest sympathy for you or any of your associates, as a judge, I must be objective in the examination of the evidence in this case. I do not for a moment doubt that you were engaged in espionage activities; however, the evidence in the case did not point to any activity on your part in connection with the atom bomb project. I cannot be moved by hysteria or motivated by a desire to do the popular thing. I must do justice according [fol. 2462] to the evidence in this case. There isn't any doubt about your guilt, but I must recognize the lesser degree of your implication in this offense.

I, therefore, sentence you to the maximum prison term provided by statute, to wit, thirty years.

While it may be gratuitous on my part, I at this point note my recommendation against parole.

The Court will stand adojurned.

Mr. Phillips: Before the Court adjourns, are the months already served taken into consideration?

The Court: No, they are not, but I will have to so sign the judgment. They have to be so considered.

(Adjourned to April 6, 1951, 2 o'clock p. m.)

[fol. 2463] New York, April 6, 1951,
2:00 o'clock p.m.

PROCEEDINGS RE SENTENCE OF DAVID GREENGLASS

The Clerk: For sentence, David Greenglass.
Mr. Saypol: Government is ready to proceed.
The Court: Defense is ready?
Mr. Rogge: Yes, I shall proceed, if your Honor please.
The Court: All right, very well.
Mr. Saypol: May I proceed, if the Court please?
The Court: Yes.

Mr. Saypol: I say with all humility that the sentences imposed yesterday are substantially in accord with my views as I would have expressed them if the Court had accepted my offer to do so at the conclusion of my presentation.

I take it, unless the Court indicates otherwise, that in this case, peculiarly, the Court will perhaps solicit my recommendation. I say "peculiarly," in the sense that this defendant has been a witness.

With all due modesty, I feel free to refer to myself as somewhat experienced in prosecution. More sentence rec- [fol. 2464] ommendations for presentation to sentencing judges are resolved by me than anywhere else perhaps in the entire system of Federal Courts.

In the almost six years of my association with this office of United States Attorney, I have learned much of the need for weighing the conflicting factors, the redemption of justice, on the one hand, in the light of the facts of the particular crime, and on the other, the rights and the welfare of the defendant and his family, as human beings.

The job is not easy. That is why, for one thing, I can appreciate the wisdom of your Honor's disposition, as reflected by your sentences yesterday. Moreover, I think it is appropriate to say that you have again inspired us, who are concerned most intimately with the preparation and presentation of evidence. We have from you, your Honor, the profound assurance that our conduct has been right.

This courtroom, its atmosphere characteristic of the somber dignity of the great system of Federal Courts, their fundamental regard for the dignity of the human being,

and his rights according to our legal system and simultaneously cognizant of the need for swift, forceful, undeviating and relentless prosecution, this courtroom has uniquely been the setting for important trials. It was here [fol. 2465] that the leaders of the Communist Party were convicted before Judge Medina. It was here that the first of the cases in this business of espionage was tried and the defendants convicted before your Honor. I refer, of course, to the trials of Abraham Brothman and Miriam Moskowitz. It was here that William W. Remington was tried and convicted before Judge Noonan and, finally, this case.

Throughout those cases there ran a pattern, there were witnesses common to more than one of some of them. I, my colleagues here, had some parts in all of them. In experience, then, in association and by observation, there is a duty on the prosecutor, like the importance of the responsibility of the judge, who has the ultimate duty to impose sentence, I say, the prosecutor, too has grave problems. These, however, may arise before and also in the course of the trial. Not the least significant in the development of a case is the identity, the place in the case of a participant, of an accomplice. Frequently, there is no free choice of witnesses to the prosecutor when probing for proof of a crime. We know that the participants in crime are in point of law ideally the best witnesses. Courts have observed in the evolution of the rule as to competency of accomplice testimony that crimes usually are not committed [fol. 2466] by clerics or barristers or medics. We have heard it said that it takes a thief to catch a thief. That is when the prosecutor is faced with decisions. Those in the crime, the contrite, the penitent, the remorseful, can, in some measure, atone for their sins. To that extent, in the solemn exercise of his obligation on his conscience must the prosecutor decide whom and how he will prosecute as affected by a willingness on the part of the culprit to go further in exposing the criminality.

As long ago as 1878 the Supreme Court of the United States stated the rule:

> "Accomplices in guilt, not previously convicted of an infamous crime, when separately tried are competent witnesses for or against each other; and the uni-

versal usage is that such a party, if called and examined by the public prosecutor on the trial of his associates in guilt, will not be prosecuted for the same offense, provided it appears that he acted in good faith and that he testified fully and fairly.

"Where the case is not within any statute, the general rule is that if an accomplice, when examined as a witness by the public prosecutor, discloses fully and [fol. 2467] fairly the guilt of himself and his associates, he will not be prosecuted for the offense disclosed.

"Consequently it is regarded as the province of the public prosecutor and not of the court to determine whether or not an accomplice, who is willing to criminate himself and his associates in guilt, shall be called and examined for the State.

"Of all others, the prosecutor is best qualified to determine that question, as he alone is supposed to know what other evidence can be adduced to prove the criminal charge."

It was evident to me at the outset, and the sequence of events has proven to my satisfaction, and the judgment of my colleagues has likewise tended toward that satisfaction, that this case could not have been proven without the information supplied by such persons as Max Elitcher, Harry Gold, Ruth Greenglass and the defendant David Greenglass. My choice as to those who should be prosecuted need not be discussed as to the first three. All however confirmed the facts which we had, as they had been developed over a period of time by painstaking digging and digging and digging by the Federal Bureau of Investigation.

When David Greenglass was arrested after the first in- [fol. 2468] dictment in the State of New Mexico, I remember well how at his arraignment before the Commissioner in this district Mr. Rogge protested his innocence. Through Ruth Greenglass, his wife, came the subsequent recantation of those protestations, their cooperation and the disclosure of the facts by both of them. They were told before that their conduct in these disclosures in no way implied any commitment to them regarding the prosecution of either.

The effect of their behavior as is now evident to all is reflected by the verdict. It was my duty to decide who should be considered for indictment by the grand jury. I am morally satisfied in my decision.

There now is presented the question of punishment as to David Greenglass. His offense was grave beyond any dispute. He carries forever a moral and a legal burden. The unusual factors of the relationships between this defendant and the others, the part played by each in the commission of the crime and now the part played in disclosure, the first part played in cooperation, the latter in direct conflict, those are engraved so deeply as never to be erased. The fate of two defendants yesterday could easily have been his. But in the language of the Ford case, there is in him now an equitable right to mercy. As forceful as your Honor has [fol. 2469] been in the case of the other defendants, you should now be inclined toward a demonstration of the broad tolerance of the Court in the presence of penitence, contriteness, remorse and belated truth.

If the Court should adopt my suggestion, and my observations, it is my view that as universally as has been accepted the effect of the judgments of yesterday, so universally will such judgment in mercy portray the wisdom, the strength, the justice of your Honor.

I take it that I may offer my recommendation?

The Court: Yes.

Mr. Saypol: I recommend that the defendant be imprisoned for a term of 15 years.

Mr. Rogge: May it please the Court, Mr. Saypol and I disagree as to what mercy means in this case. I too have had experience in prosecuting and I have also had experience in assisting in investigative agencies, especially the FBI in former years. And I can say to your Honor that in my opinion a sentence of the severity of 15 years will remove any possibility of any good that could come out of a sentence in this case. If the Government wants help it must give help. If it wants people in the position of David Greenglass to come forward and cooperate, it must give [fol. 2470] him a pat on the back. It must give example to which investigative agencies can point, and say "Now, if you will be helpful, the Government will be helpful."

I say to your Honor more important than any particular sentence that you can impose is that of finding out what the rest of the story was. The Government doesn't have the whole story. That is the number one consideration.

Now investigative agencies in trying to get at the rest of that story are going to be helped if they can go to people from whom they want information and say "Now if you cooperate, that, under our system, will entitle you to a great amount of consideration." But if sentences are handed out of this severity—for example, the defendant Gold got 30 years; so did the defendant Sobell—I mean, cooperating witnesses like Gold could say "What is the use." The same thing is true of a sentence of 15 years.

I say to your Honor that more important than the amount of sentence is to show to people that under our system if they are repentant, if they will cooperate, they will be given consideration for that.

The Court: Where do you draw the line, Mr. Rogge?

Mr. Rogge: At what, if your Honor please?

[fol. 2471] The Court: At consideration, where you are dealing with a penalty that calls for possible death and also for maximum imprisonment of 30 years?

Mr. Rogge: I will say to your Honor under the circumstances of this case which with your Honor's permission I want to refer, I say to your Honor that any sentence in excess of five years is of such severity that it defeats any good purpose that a sentence in this case could have.

And I want to call your Honor's attention to some of those circumstances. David and Ruth Greenglass grew up on the Lower East Side around the corner from each other. They got married on November 29, 1942. David at the time was 20 and Ruth was 18. David's mother went along because David was under age, to get the marriage license. They have two children, Steven four and a half and Barbara ten months.

There was an attempted indoctrination in this case but it was never successful. That attempted indoctrination in the case of David, a well-intentioned, impressionable lad, began at the age of 13 when Julius brought literature, books and chemical sets to the home for David. He flattered him; David was going to be a scientist.

The attempted indoctrination of Ruth began at the age of 18 after she married David. Ethel sent someone to try [fol. 2472] to make a conference, but in both these instances, although there were these unfavorable circumstances in their surrounding, in both of these instances the indoctrination never really succeeded. David and Ruth Greenglass, yes, wanted to see a better world, but they did not want to see a Communist one.

Now, a few months after David's marriage—three weeks after he was married he went into the Army. Now, he did not seek Los Alamos. The Government sent him there. And although David did make a misstep, he did not persist in it; he got out of it and he never did like it.

[fol. 2473] Julius wanted him to keep on at Los Alamos. He refused. David was given an offer to—and I think it was at a rather high salary—to go for six months on an atom bomb test out of the country. Julius wanted him to do it. He refused. Julius made him an offer to go to school for four years at $100. a week and maintenance, something which very much appealed to David at that time more than anything else. David refused him. Julius offered him an apartment rent free. David and Ruth refused. Julius in this last year gave David $5,000. to flee the country. David refused to do so.

Now, the misstep was only for a small period and David and Ruth never liked it; and I want to call your Honor's attention to the fact that David's fuzzy thinking occurred at a time when Russia was a war-time ally, and many other people among us were engaged in fuzzy thinking about the Soviet Union at that time. As a matter of fact, it continued for most of us until 1948. The thinking was different at that time. It is really hard to duplicate.

I can call your Honor's attention, for instance, to a column of November 22nd of last year, by Mark Sullivan, a conservative writer, in a column in the Herald Tribune, in which he said:

> "In 1945 and during some years before, our people were asked to love and help Russia as a friend and [fol. 2474] ally and to hate and destroy Germany as an enemy."

We have always had a live and let live attitude toward the world in this country. We had it and we still have it for the Russian people.

Now, this live and let live attitude for——

The Court: I want to make sure that I understand you. You are not condoning, are you, you are not condoning by reading a passage, which you have, in Mr. Sullivan's column, that because that type of thinking had been incurred in 1945 or 1944, that any individual in America had a right to set himself above his Government and determine what type of information should be furnished to Russia?

Mr. Rogge: I am not condoning that in the slightest, your Honor.

The Court: I wanted to make certain of that.

Mr. Rogge: But I am saying that there was an atmosphere at that time. General MacArthur, in one of those years, he sent a telegram, and it was a warm telegram, it was an expansive telegram, of congratulations to the Red Army.

Judge Learned Hand was a member of the National Council of American-Soviet Friendship.

President Roosevelt made many speeches, praising the [fol. 2475] Russians.

Borough President Lyons, up in the Bronx, believe it or not, declared a "Red Army Day."

I mean, we, in our attitude of live and let live—it went so far that if people such as I have mentioned, Franklin Roosevelt, MacArthur, Judge Learned Hand, if they could express in this way a live and let live attitude, when you tie that to David's fuzzy thinking, to the fact that persons older than he, Julius and Ethel, Julius whom he wrongly admired, said, "Look, we have to help this ally," I say, you have to take those circumstances without condoning it.

The Court: Well, let's get one thing clear. Russia didn't come to our aid in this war. We came to Russia's aid.

Mr. Rogge: That is quite true, Judge, but the point I am making is this: That many people far wiser than David Greenglass spoke in terms of aid and admiration for the Russians, and I say that——

The Court: I am getting a bit confused by this argument, Mr. Rogge. I want to make certain that you are not con-

doning any thinking on the part of anybody, even at that time, who would, because of his inclination to be of assistance to Russia, would be able to convince himself or herself of the fact that they should, therefore, determine for [fol. 2476] himself or herself how much aid should be given Russia.

Mr. Rogge: I am not in the slightest condoning that, Judge, by nothing that I say. But I am saying that if people such as I have mentioned, who were far wiser than David Greenglass, could talk in such terms with reference to Russia, that when you take David Greenglass, with the seduction, really, of an older person like Julius, for whom he had admiration, who talked in the same terms and said, "We have to help an ally," I am saying that that is a circumstance that your Honor should take into consideration, along with the fact that even at the time they were doing it, they didn't feel right about it, and they did get out of it, judge, and I am saying that all these things have to be taken into consideration.

I say that even with the fuzzy thinking that was going about, even with the seduction that was held out by an older person, by older persons, for whom David Greenglass had admiration, even so, he still had misgivings about it. He admired his brother-in-law; he wanted to do what his brother-in-law felt right, and yet he had doubts.

As Ruth put it on the witness stand, almost at the very beginning, they realized that the question was too big for them to decide. That is the point that your Honor was just making. Ruth Greenglass herself said they had these [fol. 2477] misgivings; this question was too big for them to decide, but they were induced into this; they never liked it; they were in only for a short period, and then they got out and refused to go along with any more of it.

Then there was the testimony of David Greenglass, when the FBI came to him in February of 1950, and asked him some general questions, he almost told them then; he wanted to, as he put it in his testimony, he was on the verge of telling them.

Now, with this background, what I do want to emphasize is that David did cooperate with the Government and almost from the outset. It took courage on David's part to con-

fess his mistake, but he did and he did it fully. He even elaborated on it. I don't have to emphasize the point of David's courage, because your Honor observed him here in the courtroom and I think your Honor is aware of it.

Now, not only did the Government have from David the full and complete story as he knew it, but I think it is also fair to say that his description of proposed methods of escape probably helped the Government to apprehend the defendant Sobell.

I think it is also not amiss to mention that in this case I represented at least six people. I represented not only [fol. 2478] David and his wife, Ruth, but I represented Max Elitcher, the first witness for the Government, and his wife, Elaine. I represented Louis Abel and his wife, Dorothy Abel, and also on the witness list was my secretary, and she was also a witness, Helen Pagano.

I think it is also relevant to point out that there were other witnesses in this case who were located as a result of the cooperation of David and Ruth Greenglass. I can point to Mrs. Evelyn Cox; I can point to Dr. Bernhard. There were still others on the witness list who were not called, and still others who may be witnesses in other cases. You couldn't get more cooperation, courageous cooperation, than this.

The Court: I must say, Mr. Rogge, that I think that you have done service to the profession and to the country in assisting these clients who came to your office to think clearly on the subject, because it is my opinion that a lawyer plays a vital part in clarifying in a witness's or defendant's mind the proper thinking on the subject, and whether or not the attorneys who represented the defendants who took the stand were ever given that opportunity or not, I don't know, but I am firmly of the opinion that it is the duty of a lawyer to ascertain the truth and then to give the best type of advice in his client's interest, and I believe you did it.

[fol. 2479] Mr. Rogge: I think I did, too, if your Honor please, and I thank you for your Honor's statement.

Now, I want to ask this: I had to have clients, however, who were not fanatics. In other words, I had people who were people without malice, who were people who were

well-intentioned. The most you can say about them is that they were a little fuzzy in their thinking, and right from the outset I had people in Ruth and David Greenglass who were solid enough that they really—I mean, their impulse was to come forward and help the Government, and that is what they did, Judge; and that in the light of all this background I want to urge upon your Honor to give consideration to, not only in the light of those circumstances, but also this: I want to emphasize that I think more important than the sentences in a particular case, here for instance, is getting at the rest of the espionage story. Therefore, I think people in David's position who were misled into a misstep, but who never really had their hearts in it, and he didn't, they must be given full and ample consideration if they repent. As I said, if the Government wants help, it must give help. If the Government wants help, if for our own security reasons, for instance, we would like to find out what the full espionage story was, we must give full and ample help to people like David Greenglass, to encourage still others to [fol. 2480] come forward and help the Government; and I say to your Honor that investigative agencies, when they talk to people who may give them information, have to be able to say to them, "Under our system, if you will be helpful, there will be this large measure of consideration for you," and fifteen years is not that measure of consideration. I think what that will do will make people shrug and say, "Well, what's the use?" And in this way make it that much more difficult for investigative agencies in this particular situation to do what I think is an even more important job, find out what the rest of the story is.

In this connection I want to call your Honor's attention to a paragraph from an editorial from the New York Daily Mirror for last Tuesday, with reference to Larry Parks. They ended with this:

> "In addition to this emotional factor there is a practical one—that it is more costly to confess than not to confess. Those who want to come clean will be afraid. We must not make them afraid. Larry Parks has set a pattern for others in Hollywood. Let him have a square deal."

I say, let David Greenglass have a square deal. Let's give him a pat on the back, so that it will be an encouragement to others to come forward and aid these investigative [fol. 2481] agencies in getting the rest of the story.

Now, I ask your Honor, what is the purpose of a sentence? If its purpose is as a deterrent it is going to have no effect as far as fanatics are concerned. I mean, if there are twisted or fanatic individuals with rebellion in their hearts, they are going to betray their country no matter what the sentences are. They may even laugh at the sentence. So far as a sentence in a case acting as a deterrent, it is going to have no effect on a fanatic. But on a person like David, who is not a fanatic, and on others who have been led by fuzzy thinking into a misstep, a heavy sentence is going to defeat the very purpose that investigative agencies would try to accomplish.

Well, what is another purpose of a sentence? Punitive, punishment. Well, we have in David Greenglass one who came forward almost from the beginning and told the Government what happened. He should be praised, not punished.

Now, another possible purpose of a sentence could be rehabilitation. A sentence is not going to act that way on David Greenglass, who never did like this thing and who was out of — even before he came to me. But I say to your Honor that a light sentence in this case could serve two major purposes. A sentence giving full consideration to the help that David Greenglass gave would be an encour- [fol. 2482] agement to others to come forward and likewise help the Government, and in this way, in this particular situation, maybe the investigative agencies would be able to uncover the rest of the espionage story. But in order to act as that encouragement, the sentence must be light. Anything in excess of five years would be of such severity that it would defeat any good purposes that could come of a sentence.

Now, a sentence could also serve a second purpose. I think a light sentence could demonstrate to our people here that we are different from the authoritarian East, that we do have regard for the individual and his human dignity; that with us he is not a means, he is an end in himself. We

have shown this regard for the dignity of human beings in other ways. I had a case in Washington only the other day that involved a claim of privilege under the Fifth Amendment. I have had occasion, incidentally, in the Eastern countries themselves, in Warsaw, to point—I haven't said "Everything that we have over here is better," but I have said, "That in our regard for the dignity of the individual, you could copy from us," and I have taken up some of their purge trials; I took up specifically the Reich case and the alleged confessions, and I said, "With us, we throw out confessions like that. We not only have the right to speak, we [fol. 2483] have got the right to remain silent. We have this regard for the dignity of individual human beings. That is our Anglo-American tradition."

Now, if we are going to have regard for the dignity of the individual and for all these other circumstances, we have an occasion here to show it, if your Honor please. As a matter of fact, when you go by comparison—and these were pointed out yesterday, and I won't repeat them—even in the cases of Axis Sally and Tokyo Rose, the sentences were from ten to fifteen years.

I even saw a newspaper item not long ago of a bunch of sentences in Czechoslovakia for alleged spying; they ran from four to thirteen years.

I do say that a sentence of such severity as fifteen years, as the Government proposes here, or thirty years, as in the case of Gold, just defeats any good that can come of this.

Furthermore, I say to your Honor that we have so much regard for the dignity of the individual and for individual cases and for repenting individuals, that there are even instances of where, after sentence—I can even give your Honor a Court of Appeals citation—where a court commented on it—where even after sentence, if it was within the sixty-day period, that there was repentance and coming [fol. 2484] forward and helping the Government, even at that late date a court gave consideration to that.

Now, I say that if a court, in circumstances even at that late date—and it has occurred that a court, even after sentence imposed, if the individual came forward and said, "We will help the Government, even at that late date, it was given consideration."

I say, how much more should it be given consideration, where, in the case of David Greenglass, almost from the outset he said to the Government, "I will tell you what happened."

Now, I have a couple of other points I want to make in a more general way.

I think that we may be overestimating how much help came from any information that was transmitted by David Greenglass. As a matter of fact, we are a country that talks a great deal, if your Honor please, and I think that the Russians could have gotten as much, and some instances more, information out of our public statements and out of what appears in our publications. I have a recollection of one or two being withdrawn, but I have an item here from the New York Journal-American, Washington Bureau, of a couple of weeks ago—no, this is longer; this is January, January 31st. It begins with this:

> [fol. 2485] "A representative of the Russian news agency Tass sat in a conference yesterday with top officials of the Atomic Energy Commission to hear vital details of amazing advance in firing the atomic weapon."

I don't think the Russians really have to go through all the trouble that they do if they just read the things that come out in our publications, I mean, we tell most of the things that we are doing.

The Court: Well, I don't think there is much point to that argument, Mr. Rogge, because your client testified—I believe he told the truth in every respect—testified to the vital character of the information which he gave to Julius Rosenberg; and, if you will recall, Dr. Koski and Mr. Derry took the stand, two experts, two scientists—as a matter of fact, Dr. Koski is, anyway—and attested to the tremendous importance of this information.

[fol. 2486] Mr. Rogge: I have one last topic, if your Honor please, and that is this: Your Honor referred to the power struggle between the Soviet Union and the United States, and that is just what it is. But I think that more, much more of our difficulties come not from what happened

as the result of what David Greenglass did, but as the result of the sudden way in which we rushed into disarmament. As a matter of fact, this was pointed out very well by an article by Paul Gallico in the Pictorial Review of March 11, 1951. He is a little facetious about it, but his point is a sound one, and I would like to read a paragraph from this, two paragraphs:

> " would you have done it any better if you had been in charge on the day the Germans and later the Japanese folded up and hollered Uncle?
>
> "Would you have turned a deaf ear to the cries of 'Bring the boys back home!'? To have kept the boys over there once the shooting was over called for vision, statesmanship and cast iron nerve. Have you got it? Have I? Has anyone?
>
> "The Administration made so many mistakes all along the line that it isn't easy to settle on any one that leads us directly to the fix we are in today, but that business of bringing the boys home and disbanding [fol. 2487] our Army, Navy and Air Force sure was one of the big ones. If the boys stay over there with their guns loaded and don't depart until the Russ likewise withdraws and we don't demobilize until same said Russ also shucks the hardware, there would be peace, beautiful peace. No Berlin airlift, no Balkan Communist satellites, no Korea, no trouble.
>
> "But who is that smart when you've just won a war, when the newspapers tell of Americans and Russians fraternizing on the Elbe, drinking toasts in vodka to celebrate the victory and the wimmen folk send up a yawp to bring home their men? What? You say you would get in the way of a dame when she wants her man back home? Brother, that I would wish to see. And you expected Harry, a guy just like the rest of us, to be that savvy and that tough?"

Our great difficulty lies in the fact that we demobilized so soon, and on top of it, many of our leaders in industry and finance and Government try to build up an indiscriminate fear of something they called "communism" but not because they were really preparing to meet an aggression,

they did this for domestic purposes. They used the cold war for domestic purposes, to try to silence those who would urge needed reforms, to try to make up for the fact that we have a faulty system of distribution, so that we have a [fol. 2488] surplus—we have got the most effective industrial machine in the world, but we have got a bottleneck at the point of distribution, so rather than solve that, they wanted to put this surplus into armament, not because they thought we really needed it, so there was a three fold tragedy here. For one thing we were not really preparing to meet aggression. For another, the American people were deceived into thinking we were more ready than we really were; and in the third place, we were not actually trying in a beneficial way to solve our domestic problems.

What these leaders did was to engage in much talk, but little effective action. What we needed instead was just the opposite. We should, on the one hand, have quietly built up our own strength and that of our responsible allies, and, on the other hand, made a genuine effort to solve our domestic problems, and then at the same time, while being strong, we could have kept on trying to negotiate. But our government wasn't wise enough to do that and our real difficulty lies in the fact that we disarmed ourselves so soon, and I urge that as another consideration of this case, so that we get this thing in perspective and don't try to put all our guilt on a person like David Greenglass, who, in a time of fuzzy thinking, also engaged in fuzzy thinking and was [fol. 2489] caught in a set of bad circumstances and allowed himself to be persuaded by someone, for whom he mistakenly had admiration.

You have here an individual who is wholly without malice, if your Honor please. I mean, you have someone—I know that he not only gave blood during the second World War, but I see he has an emblem on his coat today that he gave blood recently. I mean, this is the kind of a man you have, a well-intentioned person, without malice, who didn't think too clearly, who came up under rather rough circumstances.

I saw a cold water flat for the first time on the Lower East Side, and when I saw what some of the conditions were there, I realize that I have had rather a coddled existence,

if your Honor please, in spite of the fact that I was born and raised on a farm.

Under these adverse circumstances, the combination of them, David, during a brief period of time, was induced into a misstep, but he never liked it, Judge, he got out of it; he refused to stay on at Los Alamos; he refused to let Julius send him to school; he refused to take the $5,000, and flee the country. He really wanted to come to the Government in a repentant way and say, "I have made a mistake. Let me unburden myself," and that is what he did; and I want to emphasize in concluding, if your Honor please, that [fol. 2490] more important than the sentence that you impose on this defendant in this particular case, is to give a pat on the back where there has been this kind of courageous cooperation, so that investigative agencies in this particular situation, for instance—or I am sure they would welcome this help—so that investigative agencies, in trying to find out the rest of the story, don't have to point to these severe sentences, but comport to people who are just on the brink of cooperating—they want to—but they can say to such people, "Look, if you will cooperate, here is what happened, for instance, in the case of David Greenglass. Come forward and help your Government. We are in a system that recognizes and respects the dignity of the individual."

In this way, and with this help and with this encouragement and with this pat on the back, they can find out what the rest of the story is.

I say to your Honor that a sentence of 15 years is of such severity that it defeats and good purpose that it can serve. I say to your Honor that any sentence in excess of five years is of such severity.

I really felt that in view of all the circumstances in this case, and in order to be of proper help to investigative agencies, where they can point to the courageous coopera- [fol. 2491] tion of a person like David Greenglass, that a sentence of a year and a day would have been enough. I certainly say to your Honor, when you come to fixing the sentence at this time, do it on the side of leniency. I think that certainly you would serve justice and you would temper it with mercy if, let us say, you had a sentence in this case for David Greenglass of three years.

Mr. Saypol: I desire to make an observation, if the Court will allow me. I will not be extensive. It is merely a factual statement.

The Court: Please be very brief, Mr. Saypol.

Mr. Saypol: Indeed it will be. To the extent that Mr. Rogge undertakes to arrogate to himself the function of the District Attorney, in expressing his views as to what is most conducive for further prosecutive and investigative steps in respect to this sordid situation, I must say for the record that he is stepping outside of his role when he suggests what would be most valuable, from the view of sentence.

My memory is—I state this with knowledge of the facts—that those charged with the obligations for continuing investigation, in their discourse with me, are entirely in disagreement. They would be if they were to express it. [fol. 2492] Their views to me do not at all comport with what Mr. Rogge has said.

The Court: (To the defendant) Have you anything that you want to say?

The Defendant: Nothing.

The Court: Now, Mr. Rogge, you have stressed over and over again the fact that this Court should mete out what you characterize to be a light sentence. I like to think that neither do I ever mete out a light sentence, nor a heavy sentence, but rather a just sentence, a just sentence within the framework of the facts in this particular case.

The fact that I am about to show you some consideration does not mean that I condone your acts or that I minimize them in any respect. They were loathsome; they were contemptible. I must, however, recognize the help given by you in apprehending and bringing to justice the arch criminals in this nefarious scheme, Julius Rosenberg and his wife, Ethel Rosenberg.

You have at least not added to your sins by committing the additional crime of perjury. You confessed and told a complete story in this case and it has been of great assistance to the Government. I realize the courage that was required for you to give your testimony, and I must say that you were the recipient of the best kind of legal advice in doing so.

[fol. 2493] It is obvious that the Government gave due

consideration to your assistance in their recommendation. I have to be realistic in a situation such as this, and I recognize that despite my own inclination to be more severe on your sentence, due to the revolting nature of this offense, I must subordinate my own feeling. Our national security is more important than any personal feeling that I might have on the subject, and it is indeed more important, I think, than the punishment of any single individual; and by your assistance in this case you have helped us strike a death blow to the trafficking in our military secrets, to the advantage of a foreign nation.

Uncovering all other espionage rings which I am certain exist depends to a great extent upon the testimony of those members of the ring who recant, and seek to atone for their sins in some measure.

You like so many other foolish men and women believed that Soviet Russia was Utopia. You learned that when you enlisted in what you believed was a cause for the liberation of men you were in effect enlisting in the Russian Foreign Legion.

However, David Greenglass, you found your way back before the curtain fell on your life. You repented and you [fol. 2494] brought to justice those who enlisted you in this cause.

Justice does not seek vengeance. Justice seeks justice, but you deserve punishment, punishment which balances the gravity of your offense as against your aid.

I want you to know that I have given deep consideration to your case, with full recognition of the aid which you have given the Government, fully cognizant of the gravity of this offense.

It is the judgment of this Court that I shall follow the recommendation of the Government and sentence you to 15 years in prison.

[fol. 2495] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD AND EXHIBITS

The appellants herein and their counsel have represented and hereby represent to the appellee:

(1) That this transcript of the record contains all matter necessary fairly to present their points and such points as are relevant in reply.

(2) That in so far as the transcript of record purports to contain the stenographic minutes of proceedings, the minutes are set forth accurately, and omissions, if any, are clearly marked. Such omissions are only of matter wholly immaterial to any question raised on this appeal.

(3) That all exhibits are accurately reprinted, except those specified, namely Government Exhibits 1, 2, 3, 4A-B, 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 14A-B, 15, 16, 17, 18A, 19, 20, 21, 22A-B, 23A-B, 24A-B, 25, 25A, 26-A-1, 27, 28, 29, 31, 32; Defendants' Exhibits C 1, and H, which are omitted.

(4) That the transcript of the record contains all matters required to be set forth by applicable rules.

In reliance upon these representations it is hereby stipulated and agreed by the undersigned that the foregoing is a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties, and further, that all the exhibits pertaining to this cause not reproduced herein, may be submitted to the Court upon the argument of the appeal, with the same force and effect as if reproduced herein and, further, if it should appear to [fol. 2496] the appellee that matter properly a part of the transcript of record has been omitted and has become material, despite the representations herein made, the appellee may, at its option, reprint such matter as an appendix to its brief or may require the appellants to reprint such matter, and use such matter with the same force and effect as if reproduced herein.

[Not legible], Attorney for Appellants, Julius Rosenberg and Ethel Rosenberg; Harold M. Phillips and Edward Kentz, by Edward Kuntz, Attorneys for Appellant Sobell; Myles J. Lane, United States Attorney.

[fol. 2497] Clerk's Certificate to foregoing transcript omitted in printing.

Time to file record on appeal extended to 8/15/51.

[fol. 2498] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1951

Docket Nos. 22201-22202

UNITED STATES OF AMERICA, Appellee,

v.

JULIUS ROSENBERG and ETHEL ROSENBERG, and MORTON SOBELL, Appellants

Before Swan, Chief Judge, and Chase and Frank, Circuit Judges

Appeal from judgments of conviction entered by the United States District Court for the Southern District of New York. Affirmed.

Myles J. Lane (Roy M. Cohn, James B. Kilsheimer 3d and Stanley D. Robinson, of counsel) for United States of America.

Emanuel H. Bloch, for Julius Rosenberg and Ethel Rosenberg.

Harold M. Phillips and Edward Kuntz (Howard N. Meyer, of counsel) for Morton Sobell.

OPINION—(Argued January 10, 1952. Decided February 25, 1952)

On January 31, 1951, the grand jury indicted Julius and Ethel Rosenberg, David Greenglass, Anatoli Yakolev and [fol. 2499] Morton Sobell for conspiring between 1944 and 1950 to violate 50 U. S. C. 32[1] by combining to communicate

[1] So far as pertinent, it reads as follows:

(a) "Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, de-

to the Union of Soviet Socialist Republics documents, writings, sketches, notes and information relating to the national defense of the United States, with intent and reason to believe that it would be used to the advantage of the Soviet Union. Harry Gold and Ruth Greenglass were named in the indictment as conspirators but not as defendants, and a severance for trial purposes was granted as to David Greenglass, who pleaded guilty, and as to Anatoli Yakolev. The indictment listed ten overt acts done in furtherance of the conspiracy, including the receipt by Julius Rosenberg from Ruth Greenglass of a paper containing written information after a trip by Ruth to New Mexico, and the additional receipt by Julius from David Greenglass of a paper containing sketches of experiments conducted at the Los Alamos Project. Defendant Sobell made a motion for a bill of particulars. The government's answering affidavit charged Sobell with five overt acts made in furtherance of the conspiracy, all consisting of "conversations" with Julius Rosenberg on various dates. The trial of the defendants, Julius and Ethel Rosenberg and Morton Sobell, in the [fol. 2500] United States District Court for the Southern District of New York, lasted fourteen days.

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livers or transmits, or attempts to, or aids or induces another to, communicate, deliver or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, codebook, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided that whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years. * * *"

50 U. S. C. § 32 is now contained in the revised Title 18, § 794.

At the trial, witnesses for the government testified to the following: In November 1944, Ruth Greenglass planned a visit to her husband, David, stationed as a soldier in the Los Alamos atomic experimental station. Before her visit, Ethel and Julius Rosenberg, sister and brother-in-law of David Greenglass, urged Ruth to obtain from David specific information concerning the location, personnel, physical description, security measures, camouflage and experiments at Los Alamos. Ruth was to commit this information to memory and tell it to Julius upon her return to New York, for ultimate transmittal to the Soviet Union. David, reluctant at first, agreed to give Ruth the information Julius had requested. He told her the location and security measures of the station, and the names of leading scientists working there. When David returned to New York in 1945 on furlough, he wrote out a fuller report on the project for Julius, and sketched a lens mold used in the atomic experiment. A few nights later, at the Rosenberg home, the Greenglasses were introduced to Mrs. Sidorovich, whom Julius explained might be sent as an emissary to collect information from David in New Mexico. It was agreed that whoever was sent would bear a torn half of the top of a Jello box which would match the half retained in Ruth's possession. Ethel Rosenberg, at this time, admitted her active part in the espionage work Julius was carrying on, and her regular typing of information for him. Julius introduced David to a Russian, who questioned David about the atomic-bomb operation and formula. In June 1945, Harry Gold arrived in Albuquerque with the torn half of the Jello box and the salutation, "I come from Julius." He had been assigned to the mission by Yakolev, his Soviet superior, and had, the day before his trip, met, pursuant to [fol. 2501] Yakolev's command, with Emil Fuchs, British scientist and Russian spy working at Los Alamos. David delivered to Gold information about personnel in the project who might be recruited for espionage, and another sketch of the lens mold, showing the basic principles of implosion used in the bomb construction. Gold relayed the information to Yakolev. On a revisit of the Greenglasses to New York, David turned over a sketch of the cross-section and a ten-page exposition of the bomb to Rosenberg. Ethel typed up

the report, and, during this meeting, Julius admitted he had stolen a proximity fuse from a factory, and had given it to Russia. After the war, David went into business—a small machine-shop—with Julius, and Julius several times offered to send David to college on Russian money. Julius confided to David that he was helping the Russians subsidize American students, that he had contacts in New York and Ohio, and supplied information for siphoning to Russia, that he transmitted information to Russia on microfilm equipment, and that he received rewards for his services from the Russians in money and gifts. In 1950, Julius came to David and told him to leave the country immediately, since Dr. Fuchs, one of Gold's collaborators, had been arrested; he, Julius, would supply the money and the plan to get to Russia. A month later, after Gold's arrest, Julius repeated the warning to flee, adding that he and his family intended to do likewise, and giving David $1,000. Julius said his own flight was necessitated by the fact that Jacob Golos, already exposed as a Soviet agent, and Elizabeth Bentley, probably knew him. Julius said he had made several phone calls to her and that she had acted as a go-between for him and Golos. Julius gave David an additional $4,000 for the trip. Julius had passport photos taken, telling the photographer that he and his family planned to leave for France. After David's arrest for espionage, Ethel asked Ruth to make David keep quiet about Julius and take the blame alone, [fol. 2502] since Julius had been released after admitting nothing to the F. B. I. In 1944, Julius several times solicited Max Elitcher, a Navy Department engineer, to obtain antiaircraft and fire-control secrets for Russia, and in 1948 asked him not to leave his Navy Department job because he could be of use there in espionage. A month or so later Elitcher accompanied Sobell to deliver "valuable information" in a 35-millimeter can to Julius.

According to the government's witnesses, Sobell, a college classmate of Rosenberg's, suggested to Rosenberg that Elitcher would be a good source of espionage information, and he, Sobell, later joined Julius, in urging Elitcher not to leave the Navy Department. According to Julius, Sobell regularly delivered information for transmittal to Russia. Sobell (as noted above) delivered "valuable information" to Julius on an emergency midnight ride after learn-

ing that Elitcher was being followed by the F. B. I. He asked Elitcher for a fire-ordinance pamphlet and for the names of young engineers who might supply military information to the Russians. In 1950, Sobell fled to Mexico, used various aliases there, and made inquiries about leaving Mexico for other countries. He was, however, deported from Mexico to the United States.

The Rosenbergs took the stand and testified as follows: They had never solicited the Greenglasses for atomic information or participated in any kind of espionage work for Russia. Julius denied stealing a proximity fuse. He did not, he said, ever know Harry Gold or call Elizabeth Bentley. He admitted that he and David went into business together after the war, but said they did not enjoy good business relations. In 1950, David, according to Julius, excited, asked Julius to get a smallpox vaccination certificate from his doctor and to find out what kind of injections were necessary for entrance into Mexico. Ruth had told Julius that David stole things while in the Army, and [fol. 2503] Julius thought David was in trouble on this account. David asked for a few thousand in cash and, when Julius refused, told Julius he would be sorry. Julius denied that he gave David any money to flee, or had any passport pictures of his own family taken preparatory to flight. He never discussed anything pertaining to espionage with either Sobell or Elitcher although he saw both socially. In short, the Rosenbergs denied any and every part of the evidence which the government introduced in so far as it connected them with Soviet espionage. Sobell did not take the stand, but he pleaded not guilty. At the end of the trial, the jury found the three defendants guilty as charged. The trial judge sentenced the Rosenbergs to death, and Sobell to thirty years' imprisonment.

FRANK, Circuit Judge:

Since two of the defendants must be put to death if the judgments stand, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal.

1. The Supreme Court has held that the Espionage Act of 1917 makes criminal, and subject to the prescribed penal-

ties, the communication of the prohibited information to the advantage of "any foreign nation," even if such communication does not injure this country. See *Gorin* v. *United States*, 312 U. S. 19, 29-30, where the Court said: "Nor do we think it necessary to prove that the information obtained was to be used to the injury of the United States. The statute is explicit in phrasing the crime of espionage as an act of obtaining information relating to the national defense 'to be used * * * to the advantage of any foreign [fols. 2504-2505] nation.' No distinction is made between friend or enemy. Unhappily the status of a foreign government may change. The evil which the statute punishes is the obtaining or furnishing of this guarded information, either to our hurt or another's gain." [1a] Accordingly, the trial judge, in the case at bar, properly instructed the jury as follows: "I charge you that whether the Union of Soviet Socialist Republics was an ally or friendly nation during the period of the alleged conspiracy is immaterial, and you are not to consider that at all in your deliberations."

In *United States* v. *Heine*, 151 F. (2d) 813 (C. A. 2), we so interpreted the statute as to make it inapplicable to information which our armed forces had consented to have made public. The defendants now assert that the indictment, which followed the language of the statute, was

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[1a] In *United States* v. *Heine*, 151 F. (2d) 813, 815 (C. A. 2), after stating that the words "to the advantage of a foreign nation," inserted while the statute was in process, "greatly enlarged its scope," we went on to say: "* * * for while it is true that it is somewhat hard to imagine instances in which anyone would be likely to transmit information 'relating to the national defense,' which would be injurious to the United States, and yet not advantageous to a foreign power, it is possible to think of many cases where information might be advantageous to another power, and yet not injurious to the United States. The section as enacted necessarily implies that there are some kinds of information 'relating to the national defense' which must not be given to a friendly power, not even to an ally, no matter how innocent, or even commendable, the purpose of the sender may be."

fatally defective since it did not allege that the matter there described was not public. But the statutory language necessarily imported its correct judicial interpretation. Consequently the indictment was sufficient under Rule 7(c) of the Federal Rules of Criminal Procedure which provides: "The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * * The indictment or information shall state for each count the official or customary [folio 2506] citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated."[2]

In the *Gorin* case, the Supreme Court rejected the contention of the unconstitutionality of the statute on the ground of its vagueness under the due process clause of the Fifth Amendment. By implication, it sustained the validity of the statute against any identical argument of vagueness, such as the one urged here, under the Sixth Amendment, since the Court's decision was primarily concerned with whether the statute set up definite enough standards of guilt to advise a citizen of what exactly was forbidden and *ipso facto* a potential defendant of what exactly he was charged with doing. The Court said: "But we find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law. The obvious delimiting words in the statute are those requiring 'intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation.' This requires those prosecuted to have acted in bad faith. The sanctions apply only where scienter is established. * * * Finally we are

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[2] Rule 7(f) says: "The court for cause may direct the filing of a bill of particulars." The Rosenbergs, like Sobell, might have requested such a bill if they were really confused as to whether or not they were charged with transmitting secret information. One of the overt acts charged in the indictment covered the reception by Julius of sketches of the experiment conducted at the Los Alamos project, a good indication that the material involved was secret.

of the view that the use of the words 'national defense' has given them, as here employed, a well understood connotation. * * * National defense, the Government maintains, 'is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness.' We agree that the words [fol. 2507] 'national defense' in the Espionage Act carry that meaning. * * * The language employed appears sufficiently definite to apprise the public of prohibited activities and is consonant with due process."[3]

We think the statute valid under the First Amendment as well. The communication to a foreign government of secret material connected with the national defense can by no far-fetched reasoning be included within the area of First-Amendment protected free speech. As interpreted in the *Gorin* case, the statute forbids nothing except such communication. The Court's decision that the statute was definite enough to tell citizens what was prohibited satisfies appellants' contention that many legitimate exercises of First-Amendment rights will fall within the language of the statute. The Court said, "This requires those prosecuted to have acted in bad faith. The sanctions apply only where scienter is established." Stripped down, defendants' First-Amendment argument is the same as their argument under the Fifth and Sixth—*i.e.*, vagueness—and we think the Supreme Court has answered that argument. "A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties, and to guide the judge in its application and the lawyer in de-

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[3] The defendants argue that the *Gorin* case is not binding here, even on the due-process argument, because that case "was decided under a concession of validity of the intent clauses which enabled the court to hold that they cured the unconstitutional vagueness of the criminal standard." We find nothing in the decision indicating any "concession of validity of the intent clauses." The attack was as broad as the concept of Fifth-Amendment due process. Nor do we think the Supreme Court, in sustaining the constitutionality of so important a statute, would rely on clauses valid only by concession, without examining those clauses themselves for constitutional vulnerability.

fending one charged with its violation. But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in [fol. 2508] factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." *Boyce Motor Lines* v. *United States*, —— U. S. —— (January 29, 1952).[4]

2. The defendants, in their briefs and oral arguments in this court, have attacked the reliability of the damaging testimony given against them by the government's chief witnesses who are all self-confessed spies, and particularly the credibility of the testimony of the Greenglasses, one of whom the government has not prosecuted and the other of whom received a relatively mild sentence. Doubtless, if that testimony were disregarded, the conviction could not stand. But where trial is by jury, this court is not allowed to consider the credibility of witnesses or the reliability of testimony. Particularly in the federal judicial system, that is the jury's province.

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[4] The Supreme Court had in mind free speech considerations in the *Gorin* case, although there the statute had not been attacked on any such specific ground. For the Court said: "The philosophy behind the insistence that the prohibitions * * * upon which the indictment is based, are limited to places and things which are specifically set out in 1(a), relies upon the traditional freedom of discussion of matters connected with national defense which is permitted in this country. It would require, urge petitioners, the clearest sort of declaration by the Congress to bring under the statute the obtaining and delivering to a foreign government for its advantage of reports generally published and available. * * *" Our court said in *United States* v. *Heine*, *supra*, "Obviously — so drastic a repression of the free exchange of information it is wise carefully to scrutinize, lest extreme and absurd consequences result."

The jury here were warned by the trial judge as follows: "As to the testimony of David Greenglass, Ruth Greenglass [fol. 2509] and Harry Gold, you must consider it carefully and act upon it with caution, for they are accused of being accomplices. An accomplice in this case is anybody that the prosecution charges agreed or confederated with any or all of the defendants in the commission of the crime charged, as alleged in the indictment. I am not saying that, because a person is a co-conspirator or an accomplice, he or she is not to be believed. If this were so, many cases in this court could not be proven. In the Federal Court a defendant can be convicted upon the uncorroborated testimony of an accomplice whose testimony satisfies the jury of the defendant's guilt beyond a reasonable doubt." So instructed, the jury found defendants guilty. Faced with such a verdict, this court is obligated to assume that the jury believed the evidence unfavorable to the defendants. On that assumption, the evidence to sustain the verdict is more than ample.

3. Defendants, however, tell us that the trial judge behaved himself so improperly as to deprive them of a fair trial. Defendants' counsel first broached this suggestion on a motion for mistrial after all the evidence had been heard, said that the judge's alleged fault had been "inadvertent," and added that the judge had "been extremely courteous to us and afforded us lawyers every privilege that a lawyer should expect in a criminal case." Soon after the denial of this motion, counsel for the Rosenbergs, summing up for the jury, stated that "we feel that the trial has been conducted * * * with that dignity and that decorum that befits an American trial." Still later, the same counsel said that "the court conducted itself as an American judge." These remarks, by a highly competent and experienced lawyer, are not compatible with the complaints now made. Nor are those complaints deserved. We think the judge stayed well inside the discretion allowed him.

[fol. 2510] He is charged mainly with taking too active a part in the trial process by his questioning of witnesses. By this questioning he is alleged to have (1) emphasized key points of the government's case; (2) protected and re-

habilitated government witnesses; (3) commented on evidence as immaterial or dismissed contradictions brought out by defense attorney as not very important or convincing; (4) examined the defendants with hostility. We have carefully examined each of the hundred or so incidents cited by defendants. Several representative incidents are set out in the footnote.[5]

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[5] (1) *Alleged emphasizing of key points of the Government's case*:

Dorothy Abel, Ruth's sister, was under cross-examination as to specific declarations allegedly made by Julius in her presence with respect to the United States and the Soviet Union. The witness had replied that Julius criticized our Government because it was "capitalistic * * * that is about all I can remember." The following occurred:

> "Mr. E. H. Bloch: What else?
> "The Court: Is that the reason they assigned for preferring the Russian form of government?
> "The Witness: Yes.
> "The Court: Was there discussion of the relative merits of the capitalistic form of government as against communistic form?"

(2) *Alleged protecting and rehabilitating of Government witnesses:*

Elitcher had failed to record on his direct examination his presence at Julius' home in the week of Christmas, 1946, although he had been asked, in chronological approach, his meetings with Julius. The cross-examiner:

> "Question: You forgot about that?
> "The Court: He wasn't asked about it if I remember and it might have been nothing to the Government's case. There is a certain inference in your question that he deliberately withheld it."

Ruth was being examined on the Jello-box side she allegedly obtained from Julius and kept for many months to match with the other side produced by Gold. When pressed to describe the printing or words on this Jello box side,

[fol. 2511] In general, we can find no purpose in the judge's questioning except that of clarification. If, with that purpose, he gave witnesses who had contradicted themselves a chance to resolve that conflict, and took away defendants' temporary advantage with the jury, it was an unavoidable incident of his unchallenged power to bring out the facts of the case. See, *e. g.*, *Simon* v. *United States*, 123 F. (2d) 80, [fol. 2512] 83 (C. A. 4) cert. den. 314 U. S. 694: "It cannot be too often repeated or too strongly emphasized that the function of a federal trial judge is not that of an umpire or of a moderator at a town meeting. He sits to see that justice is done in the cases heard before him; and it is his duty to see that a case on trial is presented in such a way as to be

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she answered that her lack of knowledge of details "was not pertinent." The interlocutor's motion to strike the answer was granted and the witness admitted she had not looked at the object in her possession.

> "The Court: Now let me ask you this: what was important to you?"

The witness replied that her interest was confined to the use of the Jello box as an identification medium to be matched with the expected courier's other side of the box.

> "The Court: Excuse me, when the bearer of the other half of that side of the Jello box was to come to you, was it your primary purpose in seeing whether the two sides would fit together like a jigsaw puzzle?
> "The Witness: Yes.
> "The Court: Very well."

(3) *Alleged improper comments on evidence*:

Ruth, on cross-examination, was directed to go over her conversation with the Rosenbergs in November 1944. The cross-examiner, for the purpose of showing the witness was rehearsed, asked whether the witness' recounting of the incident was not a verbatim repetition of her direct testimony. The prosecutor objected; the following was the ruling:

> "The Court: Your objection is sustained. I don't know exactly what the point is. If the witness has

understood by the jury, as well as by himself. He should not hesitate to ask questions for the purpose of developing the facts; and it is no ground of complaint that the facts so developed may hurt or help one side or the other. In no case is the exercise of this power of the judge more important than in one like this, involving, as it does, lengthy circumstantial testimony, the force of which may be lost upon the jury if it is not properly presented or if its salient features are not called to the jury's attention at the time. The judge is the only disinterested lawyer connected with the proceeding. He has no interest except to see that justice is done, and he has no more important duty than to see that the facts are properly developed and that their bearing upon the question at issue are clearly understood by the jury." If some of his questions and comments indicated [fol. 2513] his opinion of the merits of counsel's attack or

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left out something, Mr. Bloch would say the witness didn't repeat the story accurately, and the witness repeats it accurately and apparently that isn't good."

(4) *Alleged hostile examination of defendants*:

By the Court:

"What were your own views about the subject matter of the United States having any weapon that Russia didn't have at that time? That is, in 1944 and 1945. A. I don't recall having any views at all about it.

"Q. Your mind was a blank on the subject. * * * There were never any discussions about it at all? A. Not about that, not about the weapon.

"Q. Was there any discussion at all as to any advantages which the United States had to make warfare that the Russians didn't have? A. No, nothing of that sort.

"Q. You never heard any discussions that there should be equalization between Russia and the United States? A. No, sir."

Julius had expressed to Ethel his belief that David was attempting to "blackmail" him when David's request to him for money in May or early June, 1950 was rejected and

of the witnesses' testimony, it cannot be said that he committed reversible error, since unlike judges in many of our state courts, a federal judge may comment outright on any portion of the evidence, telling the jury how it struck him, whom he believed, or disbelieved, and the like, provided only that he advises the jury that they are in no way bound by his expressions of such views. *United States* v. *Aaron*, 190 F. (2d) 144, 146-147 (C. A. 2); *United States* v. *Chiarella*, 184 F. (2d) 903, 908 (C. A. 2) rev'd on government's confession of error 341 U. S. 946; *Pfaff* v. *United States*, 85 F. (2d) 309, 311 (C. A. 7); *United States* v. *Warren*, 120 F. (2d) 211, 212 (C. A. 2); *Ochoa* v. *United States*, 167 F. (2d) 341, 344 (C. A. 9); *Herron* v. *Southern Pacific Co.*, 283 U. S. 91, 95; *Glasser* v. *United States*, 315 U. S. 60, 82.

Here the trial judge said in his charge: "No matter how careful a judge may be to avoid it, there is always the possibility that the jury or some particular juror may get an impression that the judge has some opinion with reference to the guilt or innocence of the defendants, or that he thinks that some particular phase of the case is more

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David had warned Julie "I just got to have that money and if you don't get me the money you are going to be sorry."

The Court:

"Q. Blackmail you. When did he try to blackmail you? A. Well, he threatened me to get money. I considered it blackmailing me.

"Q. What did he say he would do if you didn't give it to him? You said he said you would be sorry. A. Yes. I consider it blackmail when somebody says that.

"Q. Did he say what he would do to you? A. No, he didn't.

"Q. Did he say he would go to the authorities and tell them you were in a conspiracy with him to steal the atomic bomb secret? A. No.

"Q. Do you think that was what he had in mind? A. How could I know what he had in mind.

"Q. What do you mean by blackmail then? A. Maybe he threatened to punch me in the nose or something like that."

important than another, or that some particular witness is more credible than another, or that a certain inference of fact should not be made and so on. If you have formed any such impression you must put it out of your mind and utterly disregard it. Nothing I have said during the trial nor in these instructions was intended to give any such impression; nor were any remarks or questions addressed to any of the witnesses or to counsel so intended. On the contrary, I have been scrupulously careful to avoid any comment which might even remotely suggest that I considered the subjects of the weight of testimony, the credibility of witnesses, the inferences to be drawn or the relative importance of one segment of the evidence as against another, of the determination of the guilt or innocence of the defend-[fol. 2514] ants, as coming within the orbit of any of my functions as the presiding Judge in this trial. And so I tell you again, you are the sole and exclusive judges of the facts of this case; you, and you alone, will pass upon the credibility of all the witnesses, all in accordance with the instructions on that subject, which I shall give you later. Despite anything said by me or by counsel, your recollection of the testimony must prevail whenever your recollection differs from what I have said or what counsel for either side have said in argument or otherwise; it is for you to determine what the proofs adduced by both sides disclose, regardless of anything said by me in the brief and necessarily incomplete summaries which I have given you of the contentions of the parties; and it is for you and you alone to weigh the proofs, draw such inferences of fact therefrom as you determine should be drawn and to decide each and every one of the issues of fact in the case."

4. Evidence was introduced to the effect (1) that the defendants expressed a preference for the Russian social and economic organization over ours, and (2) that the defendants were members of the Communist Party. The defendants say this evidence was incompetent to show they would commit espionage for Russia, and that it improperly inflamed the jury against them. We think the evidence possessed relevance. An American's devotion to another country's welfare cannot of course constitute proof that he has spied for that other country. But the jurors may

reasonably infer that he is more likely to spy for it than other Americans not similarly devoted. Hence this attitude bears on a possible motive for his spying, or on a possible intent to do so when there is other evidence in the case that he did such spying. We have held such testimony admissible in a similar case involving espionage for Nazi Germany. *United States* v. *Molzahn*, 135 F. (2d) 92, 97 [fol. 2515] (C. A. 2, cert. den. 319 U. S. 774). See also *Haupt* v. *United States*, 330 U. S. 631, 642.

Communist Party membership presents a somewhat more complicated problem than pro-Soviet statements. The government had to prove that the Communist Party was tied to Soviet causes in order to make membership in it meaningful as evidence of motive or intent to aid Russia. Early in the trial, the trial judge so cautioned the jury: "I want you to understand right at the outset that the fact that they were members of the Communist Party does not establish the elements necessary to prove them guilty of the crime charged in this indictment which is conspiracy to commit espionage. * * * The government will have to establish that there is some connection between communism and committing the offense charged in the indictment." To that end, the government put Elizabeth Bentley on the stand. She testified that the American Communist Party was part of, and subject to, the Communist International; that the Party received orders from Russia to propagandize, spy, and sabotage; and that Party members were bound to go along with those orders under threat of expulsion. If the jury believed her, she supplied the missing link connecting the Communist Party with the Soviet Union, and making Communist Party membership probative of motive or intent to aid Russia.[5a]

Of course, such evidence can be highly inflammatory in a jury trial. This court and others have recognized that

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[5a] Sobell argues that proof of his Communist Party membership in 1941 was too remote to bear on his intent to join the conspiracy in 1944. We think not. In *United States* v. *Molzahn*, *supra*, we held admissible statements evidencing defendant's sympathy with the Nazi regime seven years before the alleged conspiracy began.

the Communist label yields marked ill-will for its American wearer. See, *e. g.*, *Grant* v. *Readers Digest Association*, 151 F. (2d) 733 (C. A. 2); *Menker* v. *Chesley*, 297 N. Y. 94, [fol. 2516] 100. Whether and how much of that kind of evidence should come into a trial like this is a matter for carefully-exercised judicial discretion. We think the trial judge here did not abuse that discretion. Each time Party membership was alluded to, and again in his final charge, the judge cautioned the jurors "not to determine the guilt or innocence of a defendant on whether or not he is a Communist." It may be that such warnings are no more than an empty ritual without any practical effect on the jurors; see Mr. Justice Jackson in *Krulewitch* v. *United States*, 336 U. S. 440, 453.[6] If so, this danger is one of the risks run in a trial by jury; and the defendants made no effort to procure a trial by a judge alone, under Criminal Rule 23(a).

5. Early in the trial Elitcher testified that he had accompanied Sobell on a hurried ride to the Rosenbergs to deliver "valuable" information to Julius. This ride was precipitated by Elitcher's suspicion, recounted to Sobell, that he, Elitcher, was being followed. Elitcher testified about Sobell as follows: "I turned to him and said, 'Well, what does Julie think about this, my being followed?' He said 'It is all right; don't be concerned about it; it is O.K.' He then said Rosenberg had told him that he once talked to Elizabeth Bentley on the phone but he was pretty sure she didn't know who he was and therefore everything was all right."

Defendants at the trial neither objected to this testimony nor moved to strike it. They now contend that it was inadmissible hearsay. The government contends that it was not hearsay since it was a report of a statement by Sobell, one of the Rosenberg's fellow-conspirators, about something Rosenberg said in furtherance of the conspiracy. If

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[6] See also *Skidmore* v. *Baltimore & Ohio R. Co.*, 167 F. (2d) 54, 61 (C. A. 2).

[fol. 2517] we assume that this contention is not sound,[7] nevertheless the jury was properly allowed to consider this testimony. For, as the Supreme Court has held as to hearsay testimony: "If evidence of this kind is admitted without objection, it is to be considered, and accorded its natural probative effect, as if it were in law admissible." *Speller* v. *Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117, 130; *Diaz* v. *United States*, 223 U. S. 442, 450; *Schlemmer* v. *Buffalo, Rochester Ry.*, 205 U. S. 8, 9; *Dowling* v. *Jones*, 67 F. (2d) 537, 539 (C. A. 2). The federal authorities are unanimous on this point.[8]

Greenglass also testified that Julius Rosenberg had said Miss Bentley probably knew him. The jury was therefore entitled to believe, on the basis of Elitcher's and Greenglass' testimony that Julius had spoken on the phone to Miss Bentley. In those circumstances, we see no error in permitting Miss Bentley to testify, over defendants' objections, as follows: She received several phone calls in 1943 from a man who called himself "Julius"—whose voice she

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[7] The Rosenbergs argue that the statement was not made in furtherance of the conspiracy, since Elitcher was not a member of the conspiracy as an active source of information to it. The Government answers, with reason, that Rosenberg considered Elitcher still a good prospect for espionage, and the statement was made to calm him down so that he might be willing in the future to contribute.

[8] True, we may, of our own motion, notice egregious errors to which there were no objections below, if they "seriously affect the fairness, integrity or public reputation of judicial proceedings." *Johnson* v. *United States*, 318 U. S. 189, 200-201; Criminal Rule 52(b). That exception might conceivably govern here if we believed the failure to object to this testimony resulted from the incompetence of defendants' counsel. But the record shows that defendants' counsel were singularly astute and conscientious. We know, too, that an able trial lawyer, for one or more of a variety of reasons, will often withhold an objection to the reception of hearsay. When he has done so, and it turns out that the jury's verdict is adverse to his client, the lawyer may not assert that reception as error.

did not recognize. She would then call Golos, a top Russian [fol. 2518] spy, and give him Julius' messages—acting as a go-between for "Julius" and Golos. From her talks with "Julius" and Golos, she learned that "Julius" lived in Knickerbocker Village—where, in fact, Rosenberg lived.

The testimony of Elitcher and Greenglass supplied sufficient circumstantial evidence to make it proper to allow the jury to infer that it was Julius Rosenberg, the defendant who, by phone, gave Miss Bentley the information she passed on to Golos. *Jarvis* v. *United States*, 90 F. (2d) 243 (C. A. 1) cert. den. 302 U. S. 705; 7 Wigmore, Evidence, sec. 2155. Moreover, according to Greenglass' testimony, Julius Rosenberg told the Greenglasses that an emissary would contact them in New Mexico bearing greetings from himself, Julius; Harry Gold testified that, by command of Yakolev, another spy, he, Harry Gold, bore the greeting, "I come from Julius," when he met up with the Greenglasses, per arrangement, in Albuquerque. The trial judge, of course, told the jury that they were free to accept or reject the inference that it was Rosenberg who called Miss Bentley.

6. The trial judge instructed the jury: "Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, the enforcement of the espionage laws takes on a new significance. Our national well-being requires that we guard against spying on the secrets of our defense." Concerning this statement defendants argue: "The mandate to the jury to correlate the tensions of the times with the 'new significance' to enforce the espionage laws was not only an irrelevance, but licensed the triers of the facts to yield to their emotional bias and insinuated that it would be a reflection on their responsibility as patriotic citizens if they returned a verdict other than 'guilty.'" We do not agree. For the judge also said that he did "not mean that the mere allegation or use of the word 'espionage' [fol. 2519] should justify convicting innocent persons"; and he cautioned the jurors that it was their duty "to approach [the] task of determining the issues with * * * minds completely barren of prejudice or sympathy," to "weigh the evidence in this case calmly and dispassionately

* * *" It can hardly be seriously contended that commenting on the "new significance" of espionage law enforcement gave the jury a green light to convict on emotions rather than evidence.

7. In summing up, Rosenberg's counsel argued to the jury that the Greenglasses' testimony should not be credited because they testified as part of an understanding with the prosecutor that Ruth Greenglass would not be prosecuted and that David Greenglass would receive a relatively light sentence. When, soon after the jury heard this argument, the judge instructed the jury, he said they should consider whether the Greenglasses testified as a result of business difficulties,[9] "or for some other unknown reason." It is urged that, as this statement inaccurately characterized defendants' argument, it constitutes error. We think not. The judge had no duty to repeat all the lawyers' arguments which the jury had heard a short time before. He explicitly told the jury that he could not cover all of the arguments made by both sides in their summations, and that his reference to some portions of evidence and not others "should not be taken as * * * any indication as to [his] opinion of the comparative importance or weight of that particular evidence." In addition, he explained (as we have already noted) that the Greenglasses were accomplices, and that their testimony must be carefully examined for that reason.

8. David Greenglass testified that Julius admitted "stealing" a proximity fuse from the Emerson Radio Company where he worked, and giving the fuse to Russia. On objection by defendants to the word "stealing," the court [fol. 2520] ordered it stricken. Defendants complain of the denial of their motions to strike all this testimony. They urge it was irrelevant since it was not shown that the proximity fuse was either secret or connected with national defense. The proximity fuse, be it noted, was an important World War II development which vastly increased the potential damage range of exploding shells. The nature of the device itself strongly suggests that it was secret, and unequivocally shows that it was connected with the national defense. At any rate, the testimony was admissible to show an intent on Julius' part to aid Russia.

[9] There was testimony as to such difficulties.

9. The Rosenbergs contend that four Government exhibits (2, 6, 7 and 8), consisting of sketches made by David Greenglass of lens molds and an atom bomb were improperly admitted in evidence. Exhibits 2 and 8 are diagrams of a clover-leaf type high explosive lens mold used in atomic bomb experiments and a cross-section of an atom bomb, respectively. David Greenglass testified that these diagrams, which he reproduced for use at the trial, were accurate replicas of sketches given by him to Julius Rosenberg in 1945, and last seen by him at that time. Greenglass further testified that Exhibits 6 and 7 were accurate representations of lens mold sketches which he turned over to Harry Gold, in conjunction with a report on atomic experimentation, in June, 1945. The original sketches were allegedly delivered to Yakolev by Gold and transmitted to the Soviet Union. Greenglass explained all four exhibits to the jury and used them to illustrate his testimonial description of the information he imparted to Rosenberg and Gold. Such sketches would ordinarily be admissible under the "map, diagram, and chart" rule which permits a witness to clarify his testimony by written illustration, so as to communicate complicated or confusing information more easily to the jury. *Golden Eagle Farm Products* v. *Approved Dehydrating Co.*, 147 F. (2d) 359 (C. A. 2). Defen- [fol. 2521] dants also object because David's superiors at Los Alamos were allowed to examine these sketches and to testify that they were reasonably accurate portrayals of the lens mold and atomic mechanisms used in the experimental station. We see no error here. A witness may always comment upon the substance or import of another witness' testimony; there is no reason to differentiate between verbal and non-verbal testimony in this respect. At no time were the sketches held out as those actually transmitted by Greenglass to Russia or exact replicas or copies thereof. They represented only Greenglass' recollection of what he had given the foreign agents. Hence there was no infraction of the secondary evidence rule.

10. The jury, during its deliberations, asked for a reading of that part of Ruth Greenglass' testimony covering the period from the time Rosenberg first approached her for espionage to the return of her husband to New York in 1945. Out of the jury's presence, defense counsel then asked the

judge to have read to the jury the cross-examination covering the same period. The judge said he would not, without an express request from the jury. After the direct had been read to the jury, the judge asked them if they had what they wanted, and they said yes. Defense counsel, then, in the jurors' presence, again requested that the cross-examination be read. The judge at once replied that he would read only what the jury asked for. The jurors remained silent. Defense counsel objected. They now argue that the failure to comply with their request was prejudicial error. We think not. We think that the jury understood from the colloquy that the cross would be read if the jurors so desired, and that their silence meant they had no such desire. Indeed, defendants' own argument bears this out: They do not assert that the failure to read the cross was harmful because the cross contradicted or markedly differed from the direct, but, on the contrary, because it re-[fol. 2522] peated the direct almost word for word, so that (say defendants) the jury, had it heard the cross, might have concluded that the testimony was a rehearsed falsehood. However, but a short time previously, Rosenberg's counsel, in summation to the jury, had made precisely that point (*i.e.*, that the cross parroted the direct). If the jurors had been impressed by this argument and, on that account, wanted Ruth's cross to check this very point, they would almost certainly have asked especially that the cross be read, particularly after defense counsel, in their presence, made this request. Accordingly, we hold that the refusal to have the cross read was within the trial judge's discretion.

11. As part of its case in chief, the government introduced testimony that, in 1950, after the arrest of the British atomic physicist, Dr. Klaus Fuchs, for espionage on behalf of Russia, Julius Rosenberg warned Greenglass to leave this country by way of Mexico; that Rosenberg repeated this warning after Gold's arrest; that Julius said he and his wife also intended to flee to Mexico. When the government rested, the Rosenbergs took the stand; on direct, among other things, they contradicted the foregoing testimony. On March 26, 1951, during Julius Rosenberg's cross-examination, he denied having had passport pictures taken in May or June 1950; on March 27, 1951, after the defend-

ants had rested their case, the government called one Schneider, a professional photographer, as a rebuttal witness. Defense counsel at once objected to any testimony by Schneider, on the ground that his name was not on the list of witnesses submitted before the trial to the defendants in accordance with 18 U. S. C. sec. 3432.[10] Thereupon, in [fol. 2523] answer to questions put by the prosecutor, Schneider testified that, on March 26, 1951, two F. B. I. agents came to see him, and that then for the first time had anyone communicated with him about the subject for which he was called as a witness. Over objection by the defense on the ground that Schneider's testimony was "not proper rebuttal," he was then allowed to testify that, in May or June 1950, at his photography shop, he had taken the photographs of the Rosenbergs and their children, and that at that time Julius Rosenberg had said the pictures were needed to enable the Rosenberg family to go abroad.[11]

The statutory requirement concerning the list of witnesses to be supplied before trial has been held inapplicable to a rebuttal witness.[12] Defendants argue that Schneider's testimony was inadmissible, since it served merely to corroborate evidence introduced by the government on its case in chief and was thus not rebuttal of new matter arising on defendants' case. A majority of this court rejects this argument.[12a] But, even if this argument is sound, the

[10] It reads:

> "A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with * * * a list * * * of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each * * * witness."

[11] No evidence was heard after March 27, 1950. Schneider was the last witness.

[12] *Goldsby* v. *United States*, 160 U. S. 70, 76; *Gordon* v. *United States*, 289 Fed. 552, 554 (App. D. C.).

[12a] The writer of this opinion has some doubt as to whether it was rebuttal within the meaning of the cases relative to 18 U. S. C. s. 3432. But see *State* v. *McCumber*, 202 Iowa 1382, 212 N. W. 137.

reception of this testimony was not erroneous. As it was a reasonable inference from Schneider's testimony that the government did not know of Schneider until the day before he was called as a witness, it could not have included his name in the witness list handed defendants before the trial, which began some three weeks earlier. Consequently, the statute, properly interpreted, did not exclude Schneider's testimony altogether. See *United States* v. *Schneider*, 21 D. C. Rep. 381, 413: "The statute was never intended to [fol. 2524] preclude the United States from making use of any material testimony discovered during the progress of the trial and all that it exacts of the prosecuting officer is that he shall in good faith furnish to the prisoner, before the trial, the names of all witnesses then known to him and intended to be used at the trial." It might well have been error to refuse a reasonable request for adjournment coupled with some showing of surprise. But defendants made no such request.[13]

12. Sobell raises several questions affecting his conviction. The most important of these is whether or not he was proved to be a member of the Rosenberg Greenglass Gold conspiracy to ship information to Russia. Even accepting all of Elitcher's testimony as true, says Sobell, it showed only that he, Sobell, conspired with Julius Rosenberg to solicit Elitcher's aid in espionage activities along with that of other young engineers, and to send abroad certain kinds of military engineering and fire control information,[14] but no evidence connected him in any way with the Greenglass-Gold-Rosenberg plan to ship atomic information from Los Alamos to the Soviet Union. At the end of the government's case, Sobell's counsel moved to dismiss the indictment on the ground that not one but two separate conspira-

[13] Cf. *United States* v. *McNabb*, 123 F. (2d) 848, 853 (C. A. 6, rev'd on other grounds, 318 U. S. 332); A. L. I. Code of Criminal Procedure, s. 194; *State* v. *Nolan*, 31 Id. 71, 169 Pac. 295; *State* v. *Urban*, 117 Kans. 149, 230 Pac. 77; *Crandbouche* v. *People*, 104 Col. 175, 89 P. (2d) 577; *State* v. *Harding*, 108 Wash. 606, 185 Pac. 579.

[14] There was also evidence that Sobell delivered "valuable" information to Rosenberg in a 35 millimeter film can in 1950.

cies had been proved by the government,[15] one involving [fol. 2525] Rosenberg, Greenglass and Gold, whose purpose was the transmission of atomic information, and the other involving Rosenberg and Sobell, aimed solely at the sending of various types of military information abroad. The motion was denied; the trial judge committing himself to the theory that the government's witnesses, if believed, proved one giant conspiracy, to send defense information abroad, of which the atomic espionage was only one "branch." Despite objection by Sobell's counsel, the judge charged the jury, on the one-conspiracy theory, as follows: "Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point that out because the Government contends that Sobell was in the general conspiracy to obtain information of a secret nature. To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country. If you do not believe the testimony of Max Elitcher as it pertains to Sobell, then you must acquit the defendant Sobell. If you find that there was a conspiracy and that Morton Sobell was a member of the conspiracy, any statements or acts of any co-conspirators are binding upon him because the law is that once you have joined a conspiracy attempting to accomplish an unlawful objective, the acts of the co-conspirators done in furtherance of the same objective, even though the co-conspirators are unknown to you, are binding upon you."

If in fact, Sobell is right that two conspiracies were proved, then prejudicial error has been committed, for Sobell was jointly tried with major atomic energy spies

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[15] Sobell's counsel argued that on the basis of the indictment and information obtained from an unsuccessful attempt to get a more enlightening bill of particulars, it was impossible for Sobell to ask for a severance earlier on these grounds. Sobell's position seems well taken, although it is not necessary to decide any question of waiver involved in his failure to request severance.

whose acts and declarations were held binding upon him. [fol. 2526] What distinguishes a single conspiracy from several related ones is a single unified purpose, a "common end." This "common end" is in contradistinction to the "separate ends similar in character" which characterize multiple conspiracies. *United States* v. *McConnell*, 285 F. 164, 166 (E. D. Pa.). Thus the Supreme Court has said that defendants who separately secure fraudulent loans through banking institutions from a single governmental agency by means of a single broker have separate albeit similar ends, and lack the single unified purpose of co-conspirators. *Kotteakos* v. *United States*, 328 U. S. 750. On the other hand, salesmen who make illegal sales above ceiling price of a particular brand of whisky obtained from a particular wholesaler have a single unified purpose—to raise illegally the price of that whisky: "The whisky was the same. The agreements related alike to its disposition. They comprehended illegal sales in the guise of legal ones * * * The scheme was in fact the same scheme. The salesmen knew or must have known that others unknown to them were sharing in so large a project." *Blumenthal* v. *United States*, 332 U. S. 557-558.

A majority of this court have concluded, on the following grounds, that here there was a single unified purpose: The "common end" consisted of the transmission to the Soviet Union of any and all information relating to the national defense; such a single aim distinguishes this conspiracy from that in *Kotteakos*, where each defendant was interested in obtaining his own fraudulent loan only and not in the success of his fellow-borrowers. The case is closer to the *Blumenthal* situation, where all the salesmen had a united purpose to sell the shipment of whisky at an illegally high price. Sobell is confusing the particular part each conspirator played in the espionage activities with the end-all purpose of all the conspirators—the aiding of Russia by sending to it any and all kinds of secret infor- [fol. 2527] mation. It did not matter that Sobell knew nothing of the atomic episodes; he is nevertheless charged with the acts done by Greenglass, Gold and Rosenberg, in furtherance of the over-all conspiracy. The jury could and did reasonably find that Sobell consented to the dominant aim,

and so became a member of the Rosenberg-Greenglass-Gold conspiracy.

The writer of this opinion disagrees. He thinks that there was error, in this respect, which requires that Sobell be given a new trial. The balance of this paragraph sets out the writer's reasons for dissenting on this issue. Even if Sobell, on Elitcher's testimony, could reasonably be held as a member of the Rosenberg-Gold-Greenglass conspiracy, the question of his membership should have been submitted to the jury. Elitcher's testimony would have supported either of two inferences *i. e.*, that Sobell agreed only (1) to transmit certain kinds of military information to Russia or (2) that he agreed with the other conspirators to transmit "any military information of all kin-." The jury should have had the opportunity to choose between the inferences and to decide whether he actually joined the larger conspiracy. See *Lefco* v. *United States*, 74 F. (2d) 66, 69 (C. A. 3). "Nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it; if latecomers change that he is not liable for the change; his liability is limited to the common purposes while he remains in it." *United States* v. *Peoni*, 100 F. (2d) 401, 403 (C. A. 2, per Learned Hand, *C. J.*). The judge's instructions (quoted above) do not, I think, make it clear to the jury that Sobell in order to become a member of the larger conspiracy, had to agree to transmit all kinds of secret information, and not just certain kinds which he knew about.[15a] In effect, he charged that if the jury be-

[15a] Sobell's counsel, it is true, did not submit a correct request to charge on the question of whether the jury could infer one or two conspiracies from Elitcher's testimony. He did, however, ask for dismissal of the indictment at the end of the Government's case on the ground that two conspiracies were proved, and, again before the charge, he objected in advance to the judge's theory, already enunciated in denying the motion for dismissal of the indictment, that if the Government's evidence was believed, one conspiracy and not two had been proved. In the circumstances, then, the writer thinks that the judge, on his own motion, should have submitted the question of one or several conspiracies to the jury.

[fol. 2528] lieved Elitcher's testimony, Sobell was a member of the larger conspiracy charged in the indictment.

13. Sobell alleges that the prosecutor's ill attempts at courtroom humor and "questions" containing inadmissible testimony deprived him of a fair trial. After examining each such incident, we cannot agree that, despite the judge's cautioning instructions to convict or acquit on the evidence alone, they were so important as to effect the jury adversely. Many of the so-called "loaded" questions were withdrawn before answering; objections to others were sustained and the prosecutor admonished; nothing in his summation concerning the defendants seems to have exceeded the liberal limits of legitimate partizanship and argumentation our courts customarily allow counsel. It is of some significance that Sobell's counsel himself, at the end of the trial, indicated that he thought the prosecutor had conducted himself fairly: "I am willing to shake his hand after a job that we both had to do." Similarly the Rosenbergs' counsel at the end of the trial acknowledged the good behavior of the prosecutor.

14. The prosecution introduced as an entry "in the regular course of business" a card made by an Immigration Inspector at the time Sobell re-entered the United States, stating that he had been "Deported from Mexico." This evidence is attacked as both irrelevant and hearsay. But Sobell's forced return to the United States was certainly [fol. 2529] relevant to the government's theory that he had fled to Mexico to escape prosecution, for otherwise the jury might had inferred that he had returned voluntarily to stand trial. The hearsay objection is equally without merit. As an entry of this type is required in the case of every deportee from Mexico and was made by the border inspector in the course of his duties, it qualifies as a business entry under 28 U. S. C. § 1732, § 1733. The inspector who made the entry testified at the trial, and was available for cross-examination as to the extent of his observations and his reasons for making the entry.

15. At the end of the trial, after Sobell had been found guilty, his counsel made a motion in arrest of judgment based upon an affidavit by Sobell that he had been illegally abducted by Mexican police from his residence in Mexico City and taken across the border into the United States

where he was delivered into the immediate custody of waiting United States agents. Sobell asked the trial judge to conduct a hearing on the question of whether United States officials had participated in, or instigated, his illegal kidnapping. Sobell claims that his conviction would be a nullity if it were proved that the government thus secured jurisdiction over his person in violation of United States law and international agreement.

The government answers that, even if United States officials had participated in Sobell's alleged kidnapping, the court in a criminal case, unlike a civil case, would still have jurisdiction over his person, as long as he was physically present at the trial. There appears to be authority to support this position. *Ker* v. *Illinois*, 119 U. S. 436; *Mahon* v. *Justice*, 127 U. S. 700; *United States ex rel. Voigt* v. *Toombs*, 67 F. (2d) 744 (C. A. 5); *United States* v. *Unverzagt*, 299 F. 1015 (W. D. Wash.) aff'd 5 F. (2d) 492 (C. A. 9), cert. den. 269 U. S. 566; *United States* v. *Insull*, 8 F. Supp. [fol. 2530] 311 (N. D. Ill.); *Ex parte Lopez*, 6 F. Supp. 342 (S. D. Tex.); *Gillars* v. *United States*, 182 F. (2d) 962 (App. D. C.); *Chandler* v. *United States*, 171 F. (2d) 921 (C. A. 1), cert. den. 336 U. S. 918. However, there are contrary arguments.[15b] But we need not now decide that question. For we think that Sobell waived his right to challenge personal

[15b] Both Supreme Court cases were decided before the federal anti-kidnapping statute passed in 1932, which would seem to forbid federal or state agents from kidnapping and transporting a defendant in foreign commerce. See *Collins* v. *Frisbie*, 189 F. (2d) 464 (C. A. 6), cert. granted —— U. S. ——, now being considered by the Supreme Court. In addition, the two Supreme Court cases involved kidnapping by state agents, and the subsequent exercise of jurisdiction by state courts over the kidnapped defendants. *McNabb* v. *United States*, 328 U. S. 332, laid down the rule that a defendant in a federal criminal trial, whatever the practice in state courts, could not be convicted on the basis of confessions obtained by federal agents in violation of a federal statute. Whether or not the Court would extend the *McNabb* policy to cover jurisdiction of the defendant's person obtained by a federal court through the illegal acts of federal officers, we do not know.

jurisdiction in this trial. Rule 12 (b)(2) of the Federal Rules of Criminal Procedure says: "Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, * * *" Yet Sobell made no such pre-trial motion challenging jurisdiction over his person, despite the fact that all the information contained in the post-trial affidavit was known to him at that time. When the government introduced evidence to show that Sobell had been legally deported from Mexico (evidence clearly contradictory to Sobell's present assertion), he made no move to bring to light the facts of his alleged illegal abduction.[15c] [fol. 2531] He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic. Under Rule 34, motions in arrest of judgment are allowed only (1) where the indictment charges no offense and (2) where the court had no jurisdiction over the offense charged. This situation, we think, falls into neither category. See *United States* v. *Zisblatt*, 172 F. (2d) 740, 741-742 (C. A. 2); *United States* v. *Bradford*, —— F. (2d) —— (C. A. 2, January 24, 1952). Personal jurisdiction can be waived in a criminal as well as a civil case. See *Pon* v. *United States*, 168 F. (2d) 373, 374 (C. A. 1). *United States* v. *Rauscher*,

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[15c] In his reply brief, Sobell says: "We do not contend, as the Government intimates that its violation of domestic or international law exempts Sobell from trial, but merely that he should be restored the choice * * * of entering the United States voluntarily or involuntarily. * * * What was violated was his right to be free from unlawful molestation or assault by his own Government; and his right not to be convicted by an 'admission' wrested from him by a violent act." It seems particularly inconsistent, therefore, for Sobell not to have introduced evidence, during the trial, of his kidnapping to contradict the Government's evidence of legal deportation.

119 U. S. 407, cited by Sobell, allowed a defendant to move in arrest of judgment on the ground that he had been tried and convicted of an offense other than the one for which he had been surrendered to the United States by Great Britain pursuant to an extradition treaty. There, however, the defendant also challenged personal jurisdiction before trial, and no question of the timeliness of his motion was involved.

16. The trial judge sentenced Julius and Ethel Rosenberg to death. The statute under which they were convicted provides that whoever violates the pertinent subsection "in time of war shall be punished by death or by imprisonment for not more than thirty years." 18 U. S. C. Sec. 794(b). Congress had the power to prescribe the death penalty for wartime espionage. See *Cramer* v. *United States*, 325 U. S. [fol. 2532] 1, 45.[15d] This, these defendants do not deny. They claim, rather, that, even if they were properly convicted, it was unconstitutional and an abuse of discretion for the trial judge to impose the extreme penalty in their particular case, and that we must reduce their sentences. In support of that contention they assert the following: They did not act from venal or pecuniary motives; except for this conviction, their records as citizens and parents are unblemished; at the most, out of idealistic motives, they gave secret information to Soviet Russia when it was our wartime ally; for this breach, they are sentenced to die, while those who, according to the government, were their confederates, at least equally implicated in wartime espionage—Harry Gold, Emil Fuchs, Elizabeth Bentley and the Greenglasses—get off with far lighter sentences or go free

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[15d] Since §794(c) covers communication "in time of war" to "the enemy," it might possibly be urged that § 794 (b) was not intended to apply to acts, even in war-time, which are to "the advantage of a foreign nation" when that nation is not the nation with which this country is at war but which, at the time, is an ally. However, the legislative history contains nothing to support such an interpretation.

altogether.[16] Finally, they argue, the death sentence is unprecedented in a case like this: No civil court has ever imposed this penalty in an espionage case, and it has been imposed by such a court in two treason cases only.[17]

Unless we are to over-rule sixty years of undeviating federal precedents, we must hold that an appellate court has no power to modify a sentence. "If there is one rule in the federal criminal practice which is firmly established, it is that the appellate court has no control over a sentence [fol. 2533] which is within the limits allowed by a statute." *Gurra* v. *United States*, 40 F. (2d) 338, 340 (C. A. 8). See also, *e.g.*, *Beckett* v. *United States*, 84 F. (2d) 731, 733 (C. A. 6); *Scala* v. *United States*, 54 F. (2d) 608, 611-612 (C.A. 7); *Peterson* v. *United States*, 246 Fed. 118 (C. A. 4); *Wallace* v. *United States*, 243 Fed. 300, 310 (C. A. 7); *Feinberg* v. *United States*, 2 F. (2d) 954, 958 (C. A. 8); *Carpenter* v. *United States*, 280 Fed. 598, 601 (C. A. 4); *Smith* v. *United States*, 3 F. (2d) 1021 (C. A. 9); *Hodgskin* v. *United States*, 279 Fed. 85, 94 (C. A. 2); *United States* v. *Cohen*, 177 F. (2d) 523, 525 (C. A. 2); *United States* v. *Ward*, 173 F. (2d) 628, 630 (C. A. 2); *United States* v. *Gottfried*, 165 F. (2d) 360, 368 (C. A. 2); *Voege* v. *United States*, 270 Fed. 219 (C. A. 2).[18] In *Blockburger* v. *United States*, 284 U. S. 299, 305, the Supreme Court said: "Under the circumstances, so far as disclosed, it is true that the imposition of the full penalty of fine and imprisonment upon each

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[16] The information the Rosenbergs passed, they maintain, would have become known to Russia in a matter of a few years, either through disclosures of foreign research scientists who worked at Los Alamos or through research of Russian scientists.

[17] *Stephan* v. *United States*, 133 F. (2d) 87 (C.A. 6), cert. den. 318 U. S. 781; *United States* v. *Tomaya Kawakita*, 96 F. Supp. 824 (S. D. Cal.), aff'd 190 F. (2d) 506 (C. A. 9).

[18] This Court has said that where it considers a sentence unduly harsh, it will be more inclined to regard as harmful an error otherwise probably harmless. See *United States* v. *Hoffman*, 137 F. (2d) 416 (C. A. 2); *United States* v. *Trypuc*, 136 F. (2d) 900, 902. We have, however, found no such errors affecting the Rosenbergs.

count seems unduly severe; but there may have been other facts and circumstances before the trial court properly influencing the extent of the punishment. In any event, the matter was one for that court, with whose judgment there is no warrant for interference on our part."[19] Further [fol. 2534] discussion of this subject my colleagues think unnecessary. Consequently, the subsequent paragraphs express the views only of the writer of this opinion.

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[19] At one time the circuit courts had power to correct harsh sentences on appeal. Act of 1879, 20 Stat. 354; *Wynn* v. *United States*, 11 Fed. 57 (E. D. Mo.); *Bates* v. *United States*, 10 F. 92 (N. D. Ill.). The peculiar wording of the 1879 statute was omitted in conferring appellate power upon the newly created courts of appeal in 1891. Some courts therefore considered the 1879 law repealed by implication. *Freeman* v. *United States*, 243 F. 353. But *Ballew* v. *United States*, 160 U. S. 187 (1895) and *Hanley* v. *United States*, 123 Fed. 849 (C. A. 2), strongly suggest that the statutory powers given in the 1879 law to circuit courts had been incorporated by reference in the 1891 statute setting up the circuit courts of appeal. The fact is, however, that since 1891, federal upper courts have unswervingly denied themselves power to revise sentences on appeal.

The earliest and still most quoted federal authority rejecting the power to revise sentences on appeal is *Ex parte Watkins*, 7 Pet. 567, 574, where Story, *J.*, said: "But this court has no appellate jurisdiction to revise the sentences of inferior courts in criminal cases; and cannot, even if the excess of the fine were apparent on the record, reverse the sentence." At that time, however, the Supreme Court actually had no federal criminal appellate jurisdiction over either judgments or sentences; Story's remark, therefore, has extremely limited value nowadays.

The Supreme Court reduced what it considered an excessive fine imposed on the United Mine Workers for contempt. *U. S.* v. *U. M. W.*, 330 U. S. 258, 304. But there no statute authorizing particular punishment for contempt was involved; the fine was within the discretion of the trial judge, and the Supreme Court held the discretion abused. *Cf.* White, *J.*, dissenting, in *Weems* v. *United States*, 217 U. S. at 409-410.

That upper courts have or should have power to reduce harsh sentences has long been urged by some commentators. See, *e.g.*, Hall, *Reduction of Criminal Sentences on Appeal*, 37 Col. L. Rev. 521, 762 (1937). The existence of such power may seem the more desirable in these days when, in the recent words of the Supreme Court, "Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence."[20] In England, Canada, and in several of our states, upper courts have held that they may revise sentences while affirming convictions. But these rulings were based on statutory authority. 89 A. L. R. 295; *cf.* A. L. I. Code of Cr. Proc. sec. 459.

[fol. 2535] Some of these state courts find such authority in statutes conferring power to "affirm, modify or reverse" judgments on appeal.[21] An identical power—to "affirm, modify or reverse"—is given to federal courts of appeal and to the Supreme Court by 28 U. S. C. A. Sec. 2106. That provision dates back to the Judiciary Act of 1789. See *United States* v. *Illinois Surety Co.*, 226 Fed. 653, 664 (C. A. 7). No decision by the Supreme Court or any federal court

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[20] *Williams* v. *New York*, 337 U. S. 241, 248. See also *Morissette* v. *United States*, — U. S. — (January 7, 1952), as to the "substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution.

Radin writes that, in the Middle Ages, "Justice" popularly meant the gallows. Radin, A Juster Justice, in Legal Essays in Tribute to McMurray (1935), 537, 556. See London Times, Lit. Supp., January 4, 1952, p. 11: "It is not generally realized that down to the year 1826 the punishment of every felony in this country was death. * * *"

[21] See 89 A. L. R. 295; *Commonwealth* v. *Garramone*, 307 Pa. 507, 161 A. 733, 735; *State* v. *Ramirez*, 34 Id. 623, 203 Pac. 279; *Fritz* v. *State*, 128 Pac. 170, 8 Okla. Crim. 342; *Pittman* v. *State*, 84 Ark. 292, 105 S. W. 874; see also *Commonwealth* v. *Sterling*, 314 Pa. 76, 170 A. 258, 259.

The courts of more than a dozen other states have not so construed identically-worded statutes. See, *e. g.*, *State* v. *Fowler*, 59 Mont. 346, 196 Pac. 993, 995. See A. L. I. Code of Cr. Proc. sec. 459, Commentary.

of appeals seems to have cited or considered this statute in passing on the question of the power to reduce a sentence when a conviction is affirmed. Were this question *res nova*, this court should give that section serious consideration.[22]

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[22] The trial judge's determination of a proper sentence—no easy task—should turn on his evaluation of a host of factors, including the unique fact of the particular defendant's life, conduct and character. Where an upper court has authority to review and revise a sentence, its attempt to do so may be thwarted if the trial judge has not made public the bases of his determination (although, in some instances, a sentence may obviously be unduly harsh, no matter what the particulars of the defendant's life, etc.). In the instant case, the trial judge has publicly stated the grounds on which he based the death sentences: "Citizens of this country who betray their fellow-countrymen can be under none of the delusions about the benignity of Soviet power that they might have been prior to World War II. The nature of Russian terrorism is now self-evident. Idealism as a rationale dissolves." * * * "I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. The immediate family is brought to grief and when justice is meted out the chapter is closed. But in your case, I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country. No one can say that we do not live in a constant state of tension. We have evidence of your treachery all around us every day—for the civilian defense activities throughout the nation are aimed at preparing us for an atom bomb attack. Nor can it be said in mitigation of the offense that the power which set the conspiracy in motion and profited from it was not openly hostile to the United States at the time of the con-

[fol. 2536] Because, however, for six decades federal decisions (including that of the Supreme Court in *Blockburger* v. *United States, supra*) have denied the existence of such [fol. 2537] authority, it is clear that the Supreme Court alone is in a position to hold that Sec. 2106 confers author-

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spiracy. If this was your excuse the error of your ways in setting yourselves above our properly constituted authorities and the decision of those authorities not to share the information with Russia must now be obvious. * * * In the light of this, I can only conclude that the defendants entered into this most serious conspiracy against their country with full realization of its implications. The statute of which the defendants at the bar stand convicted is clear. I have previously stated my view that the verdict of guilty was amply justified by the evidence. In the light of the circumstances, I feel that I must pass such sentence upon the principals in this diabolical conspiracy to destroy a God-fearing nation, which will demonstrate with finality that this nation's security must remain inviolate; that traffic in military secrets, whether promoted by slavish devotion to a foreign ideology or by a desire for monetary gains must cease. The evidence indicated quite clearly that Julius Rosenberg was the prime mover in this conspiracy. However, let no mistake be made about the role which his wife, Ethel Rosenberg, played in this conspiracy. Instead of deterring him from pursuing his ignoble cause, she encouraged and assisted the cause. She was a mature woman—almost three years older than her husband and almost seven years older than her younger brother. She was a full-fledged partner in this crime. Indeed the defendants Julius and Ethel Rosenberg placed their devotion to their cause above their own personal safety and were conscious that they were sacrificing their own children, should their misdeeds be detected—all of which did not deter them from pursuing their course. Love for their cause dominated their lives—it was even greater than their love for their children."

A few minutes before, during defense counsel's remarks prior to sentencing, the judge said: "You overlooked one very salient feature, and that is that their activities didn't cease in 1945, but that there was evidence in the case of con-

ity to reduce a sentence which is not outside the bounds set by a valid statute.[23] As matters now stand, this court properly regards itself as powerless to exercise its own

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tinued activity in espionage right on down, even during a period dealing with a hostile nation."

On sentencing Greenglass to fifteen years' imprisonment, the judge said: "The fact that I am about to show you some consideration does not mean that I condone your acts or that I minimize them in any respect. They were loathsome; they were contemptible. I must, however, recognize the help given by you in apprehending and bringing to justice the arch criminals in this nefarious scheme, Julius Rosenberg and his wife, Ethel Rosenberg. You have at least not added to your sins by committing the additional crime of perjury. You confessed and told a complete story in this case and it has been of great assistance to the Government. I realize the courage that was required for you to give your testimony, and I must say that you were the recipient of the best kind of legal advice in doing so. It is obvious that the Government gave due consideration to your assistance in their recommendation. I have to be realistic in a situation such as this, and I recognize that despite my own inclination to be more severe on your sentence, due to the revolting nature of this offense, I must subordinate my own feeling. Our national security is more important than any personal feeling that I might have on the subject, and it is indeed more important, I think, than the punishment of any single individual; and by your assistance in this case you have helped us strike a death blow to the trafficking in our military secrets, to the advantage of a foreign nation."

[23] The reluctance of upper courts to interfere with the sentencing process may perhaps, at least in part, be due to the existence of the executive's pardoning power, and in part to a desire not to engage in a most difficult undertaking. That process calls for training and specialized knowledge of a kind which the education of few judges provides. See Page, *The Sentence of the Court* (1948), which treats of the English judiciary, but seems substantially applicable to ours. Page points out that among English judges it "could scarcely be claimed that * * * there is any agreed and commonly accepted principle guiding their selection of

judgment concerning the alleged severity of the defendants' sentences.[24]

[fol. 2538] The Rosenbergs, however, advance a different argument, *i. e.*, that, although the statute expressly and validly permits death sentences, we do have the power and the duty to order these particular death sentences reduced because they violate the Eighth Amendment of the Constitution, which forbids any "cruel and unusual punishment." Several courts have ruled that a sentence within the limits of a valid statute cannot amount to "cruel and unusual punishment," that, when a statute provides for such punishment, the statute only can be thus attacked. *Johnson* v. *United States*, 126 F. (2d) 242, 251 (C. A. 8); *Beckett* v. *United States*, 84 F. (2d) 731 (C. A. 6); *Hemans* v. *United States*, 163 F. (2d) 228, 237-238 (C. A. 6, cert. den. 332 U. S. 801); cf. *Weems* v. *United States*, 217 U. S. 349. No federal decision seems to have held cruel and unusual any sentence imposed under a statute which itself was constitutional.[25] But let it be assumed that, even if the statute

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punishment," and quotes Mr. Justice McCardle who said: "Anyone can try a case. That is as easy as falling off a log. The difficulty comes in knowing what to do with a man once he has been found guilty." However, as noted above, it is arguable that the difficulty makes it the more desirable that upper courts be able to review and modify sentences.

[24] Where an upper court has such power, the criterion used to determine whether a sentence is too harsh would seem to be that court's own judgment—not the "common conscience."

It has been held that, in such circumstances, the upper court may consider, for such purposes, the quality of the evidence on which the verdict rests. See *Fritz* v. *State*, 8 Okla. 342, 128 Pac. 170. So here, had this court such power, it might take into consideration the fact that the evidence of the Rosenbergs' activities after Germany's defeat (as well as of their earlier espionage activities) came almost entirely from accomplices.

[25] See, however, *Shultz* v. *Zerbst*, 73 F. (2d) 668, 670 (C. A. 10); *Moore* v. *Adehold*, 108 F. (2d) 729, 732 (C. A. 10); *Dryden* v. *U. S.*, 139 F. (2d) 487, 488 (C. A. 8); *United States* v. *Sorcey*, 151 F. (2d) 899, 902-903 (C. A. 7). These cases

[fol. 2539] authorizing a sentence does not violate the Eighth Amendment, still a particular sentence, within the literal terms of that statute, may do so, because of the

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say that a sentence authorized by statute usually will not be cruel and unusual punishment, but are not altogether clear as to whether a sentence may be such, even if the statute is not. In this respect, see Mr. Justice Field, dissenting, in *O'Neil* v. *Vermont*, 144 U. S. 323, 340: "It is no matter that by cumulative offenses, for each of which imprisonment may be lawfully imposed for a short time, the period prescribed by the sentence was reached, the punishment was greatly beyond anything required by any human law for the offences."

Cf. *In re Kemmler*, 136 U. S. 436, 446, quoted in *Francis* v. *Resweber*, 329 U. S. 459, footnote 4: "* * * but the language in question as used in the constitution of the State of New York was intended particularly to operate upon the legislature of the State to whose control the punishment of the crime was almost wholly confided." *Cf.* Story, Commentaries on the Constitution, S. 1903: "* * * the provision would seem to be wholly unnecessary in a free government, since it is scarcely possible that *any department* of such a government should authorize or justify such atrocious conduct. * * *" The inhibition is "directed * * * against all punishment which by their excessive length or severity are greatly disproportioned to the offenses charged." Field, *J.*, in *O'Neil* v. *Vermont*, *supra*, 339-340.

In *Francis* v. *Resweber*, *supra*, the Court considered whether an electrocution, after a first attempt to electrocute had failed for mechanical reasons, would be so cruel and unusual as to violate the due process clause, even if authorized by the Louisiana statute. In *Johnson* v. *Dye*, 175 F. (2d) 250 (C. A. 3), rev'd on other grounds, 338 U. S. 864, the court called the treatment of Georgia chain-gang prisoners "cruel and unusual punishment" and so a violation of the due process clause of the Fourteenth Amendment. Perhaps it can be said that that treatment was so common in Georgia as to have become part of the penalties prescribed by the statute. See also *Kenimer* v. *State*, 81 Ga. App. 437, 59 S. E. (2d) 296.

specific circumstances of the case.[26] No such circumstances exist in this case. The test of a "cruel and unusual punishment" urged by the defendant—*i.e.*, that "It shocks the conscience and sense of justice of the people of the United States"[27] is not met here.

The test (unlike that applied when an upper court has discretion to modify sentences)[28] invites the criticism that [fol. 2540] it shifts the moral responsibility for a sentence from the consciences of the judges to the "common conscience."[29] But that criticism aside, this test counts against the defendants, for it means that this court, before it reduces a sentence as "cruel and unusual," must have reasonably good assurances that the sentence offends the "com-

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[26] *United States* v. *Ragen*, 54 Fed. Supp. 973 (N. D. Ill.), aff'd 146 F. (2d) 349. Perhaps this is but an elliptical way of saying that, if the statute permitted such a sentence, the statute would be unconstitutional, and therefore the statute should be so interpreted as to preclude that sort of sentence.

[27] *Id.*

The test may have been derived from the language of some Supreme Court decisions: "Taking human life by unnecessarily cruel means shocks the most fundamental instincts of civilized man"; *Francis* v. *Resweber, supra.* P. 473 (Burton dissenting): " * * * a punishment at the severity of which, considering the offenses, it is hard to believe that any man of right feeling and heart can refrain from shuddering"; *O'Neil* v. *Vermont*, 144 U. S. 333, 340 * * * "the judgment of mankind would be that the punishment was not only an unusual but a cruel one, and a cry of horror would rise from every civilized and Christian community of the country against it." *Id.*

[28] See note 24, *supra.*

[29] See Cahn, *Authority and Responsibility*, 51 Col. L. Rev. (1951) 838. Cahn's thesis suggests that a trial judge, in fixing a sentence, ought—after examining external data, including especially professional judgments in like cases—to rely on his own internal valuation and should not use the "common conscience" as a "scape-goat." See also Gray, *The Nature and Sources of Law* (2d ed. 1921), 287ff.

mon conscience." And, in any context, such a standard—the community's attitude—is usually an unknowable.[30] It resembles a slithery shadow, since one can seldom learn, at all accurately, what the community, or a majority, actually feels.[31] Even a carefully-taken "public opinion poll" would be inconclusive in a case like this.[32] Cases are conceivable where there would be little doubt of a general public antipathy to a death sentence. But (for reasons noted below) this is not such a case.

In all likelihood, it would be—if the evidence were as the Rosenbergs depict it: They say that they were sentenced to death, not for espionage, but for political unorthodoxy and adherence to the Communist Party, and that (assuming they are guilty) they had only the best of motives in giving information to Russia which, at the time, was an ally of this country, praised as such by leading patriotic Americans. But the trial judge, in sentencing the Rosenbergs, relied on record evidence which (if believed) shows a very different picture. If this evidence be accepted, the conspiracy did not end in 1945, while Russia [fol. 2541] was still a "friend," but, as the trial judge phrased it, continued "during a period when it was apparent to everybody that we were dealing with a hostile nation." For, according to government witnesses, in 1948 Julius Rosenberg was urging Elitcher to stay with the Navy Department so that he might obtain secret data; in 1948, Rosenberg received "valuable" information from Sobell; in 1950, Rosenberg gave Greenglass money to flee to Russia. This court cannot rule that the trial judge should have disbelieved those witnesses whom he saw and heard testify.[32a] And, although the indictment did not charge,

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[30] Cf. *Schmidt* v. *United States*, 177 F. (2d) 450, 451-452 (C.A. 2).

[31] Cf. *Johnson* v. *United States*, 186 F. (2d) 588, 590 (C.A. 2).

[32] Cf. *Roth* v. *Goldman*, 172 F. (2d) 788, 796 (C. A. 2, concurring opinion).

[32a] The situation is not like that which exists when an upper court has authority to modify a sentence which is within the limits of a valid statute. See note 24, *supra*.

and therefore the jury did not find, that the Rosenbergs intended to harm the United States, the trial judge could properly consider the injury to this country of their conduct, in exercising his discretion as to the extent of sentences within the statutory limits. Cf. *Williams* v. *New York*, 337 U. S. 241, 251-252: "It is urged, however, that we should draw a constitutional distinction as to the procedure for obtaining information where the death sentence is imposed. We cannot accept the contention. Leaving a sentencing judge free to avail himself of out-of-court information in making such a fateful choice of sentences does secure to him a broad discretionary power, one susceptible of abuse. But in considering whether a rigid constitutional barrier should be created, it must be remembered that there is possibility of abuse wherever a judge must choose between life imprisonment and death. And it is conceded that no federal constitutional objection would have been possible if the judge here had sentenced appellant to death because appellant's trial manner impressed the judge that appellant was a bad risk for society, or if the judge had sentenced him to death giving no reason at all. [fol. 2542] We cannot say that the due-process clause renders a sentence void merely because a judge gets additional out-of-court information to assist him in the exercise of this awesome power of imposing the death sentence."

We must, then, consider the case as one in which death sentences have been imposed on Americans who conspired to pass important secret information to Russia, not only during 1944-1945, but also during the "cold war." Assuming the applicability of the community-attitude test proposed by these defendants, it is impossible to say that the community is shocked and outraged by such sentences resting on such facts. In applying that test, it is necessary to treat as immaterial the sentences given (or not given) to the other conspirators, and also to disregard what sentences this court would have imposed or what other trial judges have done in other espionage or in treason cases.[33] For such matters do not adequately reflect the prevailing mood

[33] Cf. *Howard* v. *Fleming*, 191 U. S. 126, 135-136; *Collins* v. *Johnston*, 237 U. S. 502, 510.

of the public. In short, it cannot be held that these sentences are unconstitutional.[34]

Affirmed.

[fols. 2543-2544] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES, Plaintiff-Appellee,

v.

JULIUS ROSENBERG & ETHEL ROSENBERG, Defendants-Appellants

JUDGMENT—February 25, 1952

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, ad-

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[34] A sentence, although not "cruel and unusual," may violate the due process clause. *Townsend* v. *Burke*, 334 U. S. 736. There the Court held invalid a sentence imposed because of the trial judge's mistaken belief that the defendant was guilty of other crimes, and in a case where defendant was not represented by counsel. There is nothing equivalent here.

The Rosenbergs, of course, may ask the Supreme Court, considering 28 U. S. C. section 2106, to over-rule the decisions precluding federal appellate modification of a sentence not exceeding the maximum fixed by a valid statute, and to direct us accordingly to consider whether or not these sentences are excessive; or the Rosenbergs, pursuant to Federal Rule of Criminal Procedure 35, may move the trial judge for a reduction of their sentences; or, if those alternatives fail, these defendants may seek relief from the President. See *Biddle* v. *Perovitch*, 274 U. S. 480.

judged, and decreed that the judgments of said District Court be and hereby are affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fols. 2545-2550] In United States Court of Appeals for the Second Circuit

United States, Plaintiff-Appellee,

v.

Morton Sobell, Defendant-Appellant

Judgment—February 25, 1952

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 2551] [File endorsement omitted]

In United States Court of Appeals for the Second Circuit

[Title omitted]

Petition for Rehearing of Julius Rosenberg and Ethel Rosenberg—Filed March 11, 1952

The appellants above named respectfully petition this Honorable Court for a rehearing of the appeal in the above-

entitled cause, and in support of this petition, represent to the court as follows:

We reserve our position as to each of the points of appeal, but in this petition address ourselves solely to those features of the decision wherein we believe the court may be convinced its result is based upon the application of incorrect legal principles.

1. This Court accepted the appellants' contention that an essential element of the statutory crime of espionage [fol. 2552] is the "secrecy" of the material alleged to be the subject of the conspiracy to commit espionage, in the sense of the decisions in *Gorin* v. *United States*, 312 U.S. 19 (1941) and *United States* v. *Heine*, 151 F. 2d 813 (C. C. A. 20, 1945) cert. den. 328 U. S. 833. It rejects, however, the claimed invalidity of the indictment grounded on failure to allege expressly this constituent ingredient of the crime, upon the premise that Rule 7 (c) of the Federal Rules of Criminal Procedure permits the pleading of this element by implication from the "correct judicial interpretation" of the statutory language in which the indictment is drawn. This ruling contravenes well-settled doctrine.

While Rule 7(c) may have relaxed the strict rules of pleading in criminal prosecutions, "the fundamental functions and requirements of indictments have not been altered or modified". *Lowenburg* v. *United States*, 156 F. 2d 22, 23 (C.C.A. 10th, 1946), *Sutton* v. *United States*, 157 F. 2d 661 (C.C.A. 5th, 1946).

It has always been the rule that where a statute does not set out expressly and with certainty all of the elements necessary to constitute the offense, the indictment must descend to particulars and charge every constituent ingredient of which the crime is composed. *United States* v. *Cruikshank*, 92 U.S. 542 (1875); *United States* v. *Carll*, 105 U.S. 611 (1881); *United States* v. *Hess*, 124 U. S. 483 (1888); [fol. 2553] *Potter* v. *United States*, 155 U.S. 438 (1894); *Hagner* v. *United States*, 285 U. S. 427 (1932). The adoption of Rule 7 (c) did not break this line of judicial precedent. *United States* v. *Henderson*, 121 F. 2d 75 (App. D. C. 1941); *Frankfort Distilleries* v. *United States*, 144 F. 2d 824 (C.C.A. 10th, 1944) reversed on other grounds (324 U.S. 29); *Robertson* v. *United States*, 168 F. 2d 294 (C.C.A. 5th,

1948); *Carter* v. *United States*, 173 F. 2d 685 (C. A. 10th, 1949).

Concomitantly, the requirement that the elements of the crime cannot be pleaded inferentially remains equally good law.

> ". . . where the statute itself omits an essential element of the offense or includes it only by implication, the indictment nevertheless should allege it directly and with certainty. As has been well said, legislation may proceed by implication but good pleading may not."
>
> *Robertson* v. *United States, supra* at 295.

> "All material facts embraced in the definition of the offense must be alleged and omissions cannot be supplied by intendment or implication. The charge must be made directly, and not inferentially, or by way of recital. United States v. Hess, 1888, 124 U. S. 483, 8 S. Ct. 571, 573, 31 L. Ed. 516, where the definition of the crime is in generic terms, the charge must not be couched in the same terms but it must descend to particulars."
>
> *United States* v. *Waltham Watch Co.*, 47 F. Supp. 524, 529 (D. C. S. D. N. Y. 1942)
>
> *Accord: Kane* v. *United States*, 120 F. 2d 990 (C. C. A. 8th, 1941);
>
> *United States* v. *Hess, supra; United States* v. *Carll, supra.*

The force of this judicial doctrine cannot be avoided by [fol. 2554] casting the requirements of the *Gorin* and *Heine* cases in the framework of "an exception to [the] applicability" of the statute, since it is equally well-settled that where such an exception exists, the indictment must allege facts showing that the accused is not within the exception. *United States* v. *Waters*, 73 F. Supp. 72 (D. C. 1947); *United States* v. *English*, 139 F. 2d 885 (C. C. A. 5th, 1944); *United States* v. *Eisenminger*, 16 F. 2d 816 (D. C. D. Del. 1926); *United States* v. *Cook*, 84 U. S. 168 (1872).

This Court, therefore, in validating the indictment (here drawn in statutory language) which alleges the "secrecy"

of the documents only by "importation",* has misconceived and misapplied a long course of judicial precedent.

[fol. 2555] 2. The Court's over-simplification of the prohibitions of the Espionage Act, as interpreted by the *Gorin* case, namely, that ". . . the statute forbids nothing except . . . communication to a foreign government of secret material connected with the national defense . . ." (p. 675 of the printed opinion), betrays accuracy, and is the key to the fallacy of the Court's ruling on the appellant's constitutional contentions.

The terms of the statute forbid communication, not only to a foreign government, but to any person or combination of persons, not citizens of the United States, and the *Gorin* case does not authorize the Court's limitation of its language. Contrary to this Court's opinion, both the *Gorin* and *Heine* cases recognize that to prohibit such communication in an area so broad as that covered by the ever-expanding meaning of "national defense" under modern conditions of total warfare, would, in due process terms, establish an indefinite standard of guilt, and in First Amendment terms, constitute a "drastic repression of the free exchange

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* The suggestion of the Court, in footnote 2 at page 674 of the printed opinion, to the effect the constitutional requirement for a well-pleaded indictment could be satisfied by an inference of "secrecy" deduced from the overt act which alleged that Rosenberg received sketches of experiments conducted at Los Alamos, is strained. This assumes that a defendant, whose innocence is presumed, possesses a guilty knowledge, or at best, it places upon a defendant the obligation of having acquired or acquiring that same wide knowledge of public matters known to this learned Court. It may safely be said that there are many who have no comprehension of the significance of Los Alamos or experiments there carried out. Speculation on the extent of the defendants' knowledge is only overcome by a properly pleaded indictment.

It should be further mentioned that the Rosenbergs, like Sobell, moved the Court for a bill of particulars, although those documents formed no part of the record on appeal. This motion was denied in toto.

of information," unless restricted in some manner. The *Gorin* case, therefore, confined information relating to the "national defense" to "non-public" material, and, further, applied the "cure" of the statute's intent provisions. This Court followed suit in the *Heine* case.

But since "secrecy", under the *Gorin* and *Heine* cases [fol. 2556] is definable only with reference to a power delegated unconstitutionally, (See pp. 53-55 of the appellants' brief on appeal) to Congress and the military departments to establish what may or need not be secret under the same indefinite statutory standards, the limitations created by the *Gorin* and *Heine* cases must fall.

It follows that this Court was forced to find constitutional justification for the validity of the statute on the intent clauses. Its holding that the vagueness of the statute is cured where "bad faith" is established, overlooks the fact that such is not the "scienter" required by this law. The Espionage Act requires proof of the specific "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of a foreign nation." Should this intent requirement, in itself, be vague, as appellants' contend, the Court would be required to strike down the statute as "general in its description of the mischief to be remedied and equally general with respect to the intent of the actor . . ." *Herndon* v. *Lowry*, 301 U. S. 242, 258 (1937).

The Court avoids an examination of these crucial contentions by seeking shelter in the *Gorin* case. We are told that the issue of the vagueness of the intent clauses is no longer an open question because this Court believes that the Supreme Court would not have decided the *Gorin* case [fol. 2557] without having made a determination as to their validity. The appellants are constrained to insist the only evidence of the matters decided by the Supreme Court are its opinions which are express statements of what it, in fact, decided. In the *Gorin* case, the appellants did not challenge the vagueness of the intent clauses of the Espionage Act. Neither did the Supreme Court, on its own motion or otherwise, examine or treat with this question.

This Court, therefore, being unbound by precedent,

should re-evaluate its holding in light of its omission to consider this decisive issue.

3. The contentions of the appellants that the judicial misconduct of the trial Judge deprived them of a fair trial by jury in violation of the Sixth Amendment to the Constitution of the United States are dismissed because, in the opinion of the Court, ". . . the judge stayed within the discretion allowed him."

This opinion finds support, we are told, in the absence "in general" of any "purpose in the judge's questioning except that of clarification."

"Purpose" is made the criterion for the determination as to whether the "questioning" falls within or without the permissible boundaries of "clarification." In setting up a subjective standard, the Court has come in conflict with [fol. 2558] the established test that rules the objective effect of the judge's conduct on the jury the controlling factor.

> "The impartiality of the judge—his avoidance of the *appearance* of becoming the advocate of either one side or the other . . . is a fundamental and essential rule of especial importance in criminal cases." *Adler* v. *United States*, 182 F. 464 (C. C. A. 5th, 1910).
>
> "He (the trial judge) should sedulously avoid all *appearance* of advocacy as to those questions which are ultimately to be submitted to the jury . . ." *Frantz* v. *United States*, 62 F. (2nd) 737 (C. C. A. 6th, 1933).
>
> ". . . The judge should be careful to preserve an *attitude* of impartiality and guard against giving the jury any *impression* that the Court was of the opinion that the defendant was guilty." *Gomila* v. *United States*, 146 F. (2nd) 372 (C. C. A. 5th, 1944).
>
> "We are well aware of the damage in a situation where a judge assumes, *or appears to assume*, the role of advocate, and of the necessity for his sedulously maintaining an *attitude* of judicial impartiality between the accused and the accuser." *Ochoa* v. *United States*, 167 F. (2nd) 341, (C. C. A. 9th, 1945).
>
> (All emphases ours.)

A defendant in a criminal case is not under compulsion to probe a judge's mind to ascertain the purpose for his

conduct; his constitutional guaranties are a bulwark against a display of judicial partiality, the impact of which may tend to sway a jury against him. Judicial bona fides is an irrelevance *; honest or careless over-zealousness, like [fol. 2559] deliberate design, can produce the interdicted consequences.

The Court does not controvert the claim that the judge's conduct had the effect of tipping the scales against the appellants but justifies the imbalance as "an unavoidable incident of his unchallenged power to bring out the facts of the case." But the Court has disregarded the outer limits of this power which are circumscribed when its exercise generates in the minds of the jury avoidable bias and prejudgment. So, the judicial power to develop facts enters the forbidden field of inquiry when it wears the face of partisanship and manifests itself in prosecutive manner.

> "Prosecution and judgment are two quite separate functions in the administration of justice; they must not merge." *United States* v. *Marzano*, 149 F. 2d 923, 926 (C. C. A. 2nd, 1945).

Present here beyond cavil or dispute is a consistent course of judicial questioning that "(1) emphasized key points of the government's case; (2) protected and rehabilitated government witnesses; (3) commented on evidence as immaterial or dismissed contradictions brought out by defense attorney as not very important or convincing; (4) examined the defendants with hostility." The pattern was

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* The appearance of judicial partiality, though inadvertent, is prohibited. *Gomila* v. *United States*, *supra*, *Frantz* v. *United States*, *supra*. Defense counsels' characterization of the judge's conduct as "inadvertent", suggested by the Court to be "not compatible with the complaints now made," therefore is neither a waiver of the defense position, nor a reflection on the validity or good faith of their claim.

unfolded gradually, its force becoming fully apparent by the [fol. 2560] weight of cumulation.*

A record so permeated, is indelibly stamped with judicial unfairness, the essence of which cannot be concealed by euphemisms.

The Court suggests, nonetheless, that the trial judge had the right to animadvert on the merits of the case under his right to "comment outright on any portion of the evidence."

On the surface, this enunciation appears to be a restatement of previous decisions. It represents, however, a dangerous extension of, or departure from established authority. No precedent sanctions such arrogation of power to the federal judiciary.**

[fol. 2561] For the right to comment, it appears, has been approved only where the remarks are made in the charge of the judge. This must necessarily be the rule since a defendant "is entitled to the benefit of the presumption of innocence by both judge and jury till [*sic*] his guilt is proved." and the Court, which often boomerangs against their clients. See *Adler* v. *United States, supra.*

Adler v. *United States, supra.* The instant ruling empowers

* This explains why defense counsel made their motion at the end of the entire case.

The remarks of the Court that "a highly competent and experienced lawyer" waives the claim of judicial unfairness because he had made remarks, before the jury, upholding the dignity of the Court, ignores the lessons of "competent and experienced" trial lawyers. They mature to realize the danger of engendering conflict between them

** See e.g.

Cal-Bay Corporation v. *United States*, 169 F. 2d 15, (C.C.A. 9th, 1948);

United States v. *Marzano* (supra);

Frantz v. *United States* (supra);

Adler v. *United States* (supra);

Hunter v. *United States*, 62 F. 2d 217, C.C.A. 5th, 1932;

Williams v. *United States*, 95 F. 2d 685, C.C.A. 9th, 1937;

American Motorists Ins. Co. v. *Napoli*, 166 F. 2d 24, C.C.A. 5th, 1948.

a federal trial judge to emasculate, if not destroy, this inalienable right of an accused at any point in the course of a trial.

By inference, and certainly as applied to the facts of this case, the Court sanctions the propriety not only of "outright comment" but also of a persistent pattern of conduct insinuating the belief of the trial judge in the guilt of the accused, a form of expression of opinion, be it noted, more difficult for the jury to distinguish as judicial belief since not easily recognizable as such.

Thus, the Court has narrowed a defendant's protection against judicial impropriety and has run counter to the admonition of the Supreme Court that substantive safeguards be made "as impregnable as possible". *Blumenthal v. United States*, 332 U. S. 539 (1947). Instead, it has relegated an accused to the illusory refuge of a monitary instruction. Only the naive or myopic assume that prejudicial effects can be overcome by these warnings. *See Krulewitch v. United States*, 336 U. S. 440, 453 (1949).

Yet the Court insists that the cautionary charge of the [fol. 2562] judge cleansed the record of judicial misbehavior. While, in some instances, instructions to a jury may correct prior judicial aberrations, this is not the case. A jury, impregnated with three weeks of impressions of an attitude of constant judicial disfavor towards these defendants, coupled with its respect for the authority of the bench, must defy the accepted laws of psychological behavior to be able to free their assailed minds and to restore lost objectivity by the patent of a three-minute homily. Certainly in a capital case, legal abstractions should yield to the facts of life.

4. The Court rules that "an American's devotion to another country's welfare . . . has relevance . . . as a possible motive for his spying or on a possible intent to do so." (Opinion p. 652).

This rule is inapposite in the context of the evidence introduced below. The Court itself delineates the prosecution's evidence as merely showing "that the defendants expressed a preference for the Russian social and economic organization over our own." Such expressions denote no more than an academic leaning to a social or political

theory; they connote no "devotion to another country's welfare."

Indeed, they are expressions concerning which the Su- [fol. 2563] preme Court has declared:

> "Such testimony is to be scrutinized with care to be certain the statements are not expressions of mere lawful and permissible differences of opinion with our own government or quite proper appreciation of the land of birth." *Haupt* v. *United States*, 330 U. S. 631, 642 (1947).*

We submit the instant ruling is in direct conflict with the *Haupt* doctrine.

The implications of the decision are portentous. No more potent weapon in the arsenal of censorship of freedom of thought has yet been devised. Fear will stalk the individual from the cradle to the grave lest attachment to social, economic or political ideas, other than the orthodox or insular, may, some day, ghost-like, rise to haunt him as material evidence in criminal prosecution for high crimes. The dangers of the concept it has sired should convince the Court of the imperative need to reconsider and reverse its opinion.

[fol. 2564] 5. The Court rules that membership in the Communist Party, *per se*, is competent evidence that a member subscribes to the alleged tenets of the Party, among them, the obligation to go along with orders to the Party from the Soviet Union to "propagandize, spy and sabotage . . ." on behalf of the Soviet Union.

Apart from the appellants' strenuous contentions that the prosecution failed to show membership of the Rosenbergs or that the Communist Party did have any such platform or principles, we press the total absence of evidence

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* The misgivings of the Court in the *Haupt* case were articulated after the decision in *United States* v. *Molzahn*, 135 F. 2d 92 (C.C.A. 2nd, 1943) and were meant to act as a brake upon the predilections of this Court to permit lawful expressions of opinion to be utilized as evidence of criminal propensity. At any rate, the proof presented in the *Molzahn* case, as has been demonstrated, was qualitatively different from the present case.

to indicate that the Rosenbergs, if members, personally adhered to these dictates or even had knowledge of them.

The Supreme Court stated in *Schneiderman* v. *United States*, 320 U. S. 118, 136 (1943):

> "That under our tradition beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles."

This doctrine is binding upon the Court; the present ruling abrogates this well-settled precedent and should be repudiated.

In the absence of proof of personal acceptance, the entire evidentiary structure erected by the Government had no relevance or place in the trial. The Court's concession of the highly inflammatory nature of the testimony underscores the injury to the appellants by the admission of [fol. 2565] such evidence.

Finally, it is novel to hear that a defendant should forfeit his constitutional right to a jury trial even in a capital case, to avoid the effects of this prejudicial matter.* Buried is the power and responsibility of an appellate court to control the "discretion" of a trial court so as to secure an accused a fair trial before a jury.

6. It is disquieting to observe the Court's failure to treat with the basic error concerning introduction in evidence of the "Julius"-Bentley telephone conversations, asserted by the appellants Rosenberg to be "the most devastating single blow that was dealt to the defendants' chance for a fair trial." Confining its consideration to the adequacy of the foundation laid for the admission of the

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* The implied assurance that a judge is less likely to indulge his political presumptions with respect to the Communist issue affords a defendant dubious security for waiver of a jury trial.

testimony,** the Court does not examine the issue raised as [fols. 2566-2567] to the *competence* of the evidence to prove the crime itself or any element of the crime.

The evidence had the purport and effect of linking Julius Rosenberg with the Golos-Bentley spy apparatus, or, at the very least, of indicating his prior association with persons who were notoriously spies. But the Golos-Bentley group, according to the Government, operated only before the inception of the instant alleged conspiracy and the record is barren of any proof that the present conspiracy had its genesis in the former or that there was any identity of personnel or objective between the two.

Under this state of facts, the established authorities record their unequivocal condemnation of the introduction by the prosecution of evidence tending to connect the accused with another crime or a defendant's evil character to establish a probability of his guilt. These authorities are fully collated for the Court in the appellants' brief on appeal at pp. 124-126.

** The appellants must also express to the Court their apprehension over its approval of the circumstantial base which it deems adequate for the introduction of the "Julius"-Bentley telephone conversations. The Court shows itself willing to rely on the sole fact that Julius Rosenberg and Bentley may have known each other, during an unspecified period of time, as sufficient assurance of the likelihood that specified telephone calls, occurred at a specific time. Pragmatically, the fact that two people are acquainted, or even had conversed on the telephone, is a tenuous base upon which to build an inference that they engaged in a particular telephone call at a particular time. Jarvis v. United States, 90 F. 2d 243 (C. C. A. 1st, 1937) cert. den. 302 U. S. 705, relied on by the Court, as do all the other authorities, does pin-point the questioned telephone call as to time; moreover, present also were additional circumstances which excluded the possibility that the antiphonal speaker was anyone but the party charged.

We urge our right to a pronouncement of the Court on this vital issue.*

7. The Court rejects the appellants' point concerning the obligation of the trial Court to cause to be read to the jury the cross-examination of Ruth Greenglass upon re- [fol. 2568] quest of the jury for the "testimony" of this witness.

Although cited by the appellants, the Court ignores its own decision in *United States* v. *Compagne*, 146 F. 2d

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*The Court's ruling is equally questionable with respect to the introduction of evidence concerning the "theft" of a proximity fuse. This evidence to be competent to prove the crime charged must be supported by proof of its "secrecy" and relation to the national defense. Its competence to be introduced as probative only of intent, similarly, is dependent on such proof, for without it, and thus without evidence of the identity of this other crime with the crime charged, its admissibility for that purpose would be proscribed. See appellant's brief on appeal, pp. 126-127. The Court's opinion seeks to relieve the prosecution of its burden to prove that the proximity fuse related to the national defense by the weight of its own knowledge. Again the appellants must suggest the learned Court's overestimation of the knowledge of the average man and juror on this technical subject. Moreover, since the government did not request the trial court to take judicial notice of the relation of the proximity fuse to the national defense, the jury was afforded no opportunity to secure a rational basis from which to infer this nexus.

The further inference which the Court permits itself of the "secrecy" of the proximity fuse, can only be based upon its failure to review that the "secrecy" prescribed by the Gorin and Heine cases, does not carry the dictionary definition, but signifies "non-public" in the sense that Congress or the military departments have restrained its publication, and that it had not, in fact, been published. A presumption of "secrecy", in this sense, is not within the competence of the Court. Its ruling, therefore, would seem to controvene the established rules for the admission of such testimony.

524 (C.C.A. 2nd, 1944), holding that a request by defense counsel to that effect, as was made here, must be favored.*

8. The Court, by virtue of its misconception of the appellants' contentions relating to the death sentence, fails to reach the constitutional argument upon which the appellants rely. The Court asserts that the appellants claim that the sentence was "unconstitutional and an abuse of discretion for the trial judge to impose the extreme penalty in their particular case, and that we must reduce their sentences."

The appellants never urged the invalidity of the sentence as an "abuse of discretion"—this was a concept insinuated by the Government—and never asked the Court to *reduce* the sentence. The appellants pressed the unconstitutionality of the sentence, as in violation of the Eighth Amend- [fol. 2569] ment, and asked that the judgment imposing it be *reversed*, as would any other unconstitutional judicial action.

The Court, relying upon its lack of power to *modify* sentence, however, refused to examine appellants' further arguments. Only the obiter dictum of Judge Frank purports to do so.*

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* Whether or not the *Compagne* case mandated the trial Court to accede to this defense request, it is misleading to spell out of the instant situation a lack of desire of the jury to hear the reading of the cross-examination. The denial of the defense request, in the presence of the jury, could not have been construed as an invitation to the jury to insist on such reading. On the contrary, the denial was not only a discouragement, but, to the lay minds of the jury, reasonably could have represented a conclusive ruling disapproving the propriety of such a further request on their part.

* Judge Frank, similarly misconceiving the arguments of the appellants, ascribes to them the intention of having the Court apply, as the standard for determining the constitutional validity of the sentence, the test that the sentence "shocks the conscience and sense of justice of the people of the United States". By resorting to this "community-attitude" test, *not* urged by the appellants, the Judge, after denying his capacity to determine the commu-

Under the unique facts of this case, which juvenate the novel question presented to the Court, the appellants submit that a determination on the merits of their claim, should not be disdained.

9. The Espionage Act, as not construed by this Court, and applied to the facts of this case, violates Article III, Section 3 of the Constitution of the United States.

The appellants were tried as "traitors". In his open-[fol. 2570] ing remarks to the jury, United States Attorney, characterized the defendants as "traitorous Americans" (R. 229), their alleged criminal conduct as "traitorous activities" (R. 230), and promised the jury that it would find "overwhelming" the "evidence of these traitorous acts". (R. 232). His summation was punctuated with pointed references to the "treason" of the defendants (see, e.g. R. 2282, 2284), and was climaxed by an appeal for the conviction of "these traitors" (R. 2313).

The appellants were sentenced as "traitors", to the penalty traditionally accorded treason. See, *United States* v. *Greathouse,* 26 Fed. Cas. No. 15, 254; Hurst, *Treason in the United States,* 58 Harv. L. Rev. 395, 425. Their alleged "betrayal" evoked the wrath of the trial judge (R. 2449-53).

In essence, the appellants labored under the accusation of treason with the "passion-arousing potentialities", whose virulence impelled the incorporation of the restrictive treason clause embodied in the Constitution. *Cramer* v. *United States,* 325 U.S. 1, 45, 48 (1945).

This Court's decision transmutes, however, an objection,

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nity attitude, rejects the alleged argument of the appellants by reaching the conclusion that "it is impossible to say that the community is shocked and outraged by such sentences."

The appellants actually pressed upon the Court, and documented fully (see appellants' brief on appeal at pp. 135-142) that the sentence was imposed for political reasons, and, by its coercive power, to secure political conformity, a condition against which the Eighth Amendment was designed to stand as a citadel.

otherwise relegated to the charge of prejudicial unfairness, to the dignity of a constitutional challenge.

Article II, Section 3 of the Constitution declares:

> "Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them Aid and Comfort. No Person [fol. 2571] shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." *

This constitutional prescription, on its face, and by judicial interpretation, establishes two essential elements of the crime of treason—adherence to the enemy and rendering him aid and comfort. *Cramer* v. *United States*, *supra*.

This Court rules that the statutory intent of the Espionage Act, to injure the United States or to advantage a foreign nation, is established by evidence of "an American's devotion to another country's welfare . . ."(p. 682 of the printed opinion). Conjoined with adherence to the rationale of the *Gorin* case,** that potential enmity is the equivalent of present enemy status, and coupled with proof of violation of the substantive proscriptions of the Espionage Act,*** this Court creates a complete identity between the elements of the crime of espionage and the crime of treason. The prof authorized here, against appellants' [fol. 2572] unavailing protests, would have equally estab-

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* Section 2381 of Title 18 of the United States Code provides that the death penalty may be imposed for violation.

** ". . . No distinction is made between friend or enemy. Unhappily the status of a foreign government may change." *Gorin* v. *United States*, *supra* at pp. 29-30.

*** The communication, delivery or transmittal of certain materials relating to the national defense.

lished every element of treason.* The imposition of the sentence of death highlights the identity.**

The authorities are insistent that the requirements of treason clause can neither be overridden nor circumvented by "giving the same offense a different name". *Cramer* v. *United States, supra.* ". . . Where [a] defendant is charged with conduct involving all the elements of treason within the constitutional definition, and the gravamen of the accusation against him is to aid its [the country's] enemies, it would seem in disregard of the policy of the Constitution to permit him to be tried under another charge than treason." Hurst, *Treason in the United States, supra* at p. 421. See also: *Wimmer* v. *United States*, 264 F. 11 (C.C.A. 6th, 1920), cert. den. 253 U.S. 494.

[fol. 2573] The appellants, thus subjected to a treason prosecution, under the camouflage of a conspiracy to commit espionage charge, were convicted without the constitutional safeguards afforded persons accused of treason, namely the prerequisite of "Testimony of two Witnesses to the same overt Act." And the Supreme Court has strictly enforced

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*Cf. *Ex parte Quirin*, 317 U.S. 1 (1942), where the court on its own motion raised and disposed of the cogency of an argument that the accused could have only been charged with treason, on the ground that the crimes were not identical. Furthermore, its decision was based alone on a resolution of the conflict of the jurisdiction of military and civil authority.

** Were this Court to conclude that the instant crime, on the record presented here, is not tantamount to treason, we urge a re-examination of our contentions concerning the invalidity of the sentence as constituting cruel and unusual punishment. "There is the possibility that Congress might be restrained by the constitutional ban on cruel or unusual punishments from imposing the highest penalties for certain conduct, unless it were held to mount to the level of treason." Hurst, *Treason in the United States, supra* at p. 423.

these requirements to reach each and every essential element to establish the crime. *Cramer* v. *United States, supra.**

Were these appellants prosecuted for treason and accorded the protections secured to them by the Constitution, they would not have been compelled to stake their lives on impeachable and loose evidence introduced in the dragnet of conspiracy prosecutions. Nor had the Government the choice to elect its measure of proof to obtain a conviction. "The [treason] provision was adopted not merely in spite of the difficulties put in the way of prosecution but because of them. *Cramer* v. *United States, supra* at p. 48.

Hence, the entire proceeding below was in derogation [fol. 2574] of the Constitution of the United States and should be reversed.

Emanuel H. Bloch, Attorney for Appellants, Julius Rosenberg and Ethel Rosenberg.

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* Some of the alleged overt acts here, because innocent on their face, would have been incompetent to prove treason. Others, otherwise competent on a treason charge, were not proved by the testimony of two witnesses. The proof of intent here was totally inadequate to meet the standards demanded by the courts. *Cramer* v. *United States, supra.* It is impossible to tell, on the jury's general verdict, whether they selected as evidence for conviction, that which would have satisfied treason criteria.

[fol. 2575] STATE OF NEW YORK,
County of New York, ss:

Emanuel H. Bloch, being first duly sworn, on oath certifies and says:

He is the attorney for the appellants Julius Rosenberg and Ethel Rosenberg in this cause; that he makes this certificate in compliance with Rule 28 of this Court; that in his judgment the within and foregoing petition for rehearing is well founded and is not interposed for delay.

Emanuel H. Bloch.

Subscribed and sworn to before me this 11th day of March, 1952. Gloria Feinman, Notary Public, State of New York. No. 41-1182450. Qualified in Queens County. Certs. filed with Queens, N. Y., Bronx & Kings County Clerk & Register Offices. Commission Expires March 30, 1953.

[fol. 2576] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REHEARING FOR APPELLANT MORTON SOBELL—Filed March 11, 1952

To the United States Court of Appeals for the Second Circuit and the Judges Thereof:

Comes now Morton Sobell, an appellant in the above-entitled cause, and presents this, his petition, for a rehearing of the above entitled cause, and, in support thereof, respectfully shows,

I

The views of the majority of the Court on the question of whether there was more than one conspiracy proved, are so stated as to vitiate entirely the protection which the *Kotteakos* case was intended to afford against "trans-

ference of guilt from one to another across the line separating conspiracies" (328 U. S. 750, 754).

We deferentially submit that the majority has failed to apprehend that the rule it has laid down in permitting "a single unified purpose" to be found in the imputation of [fol. 2577] a "common end consist[ing] of the transmission to the Soviet Union of *any and all* information" (slip op. p. 694, emph. supp.) is one which has the necessary effect of obliterating the "line separating conspiracies", whenever they have an overlapping participant and a parallel objective.

The approach which the majority adopts, as presented in Judge Frank's opinion, is difficult to distinguish from that of the trial judge in the *Lekacos* case, which this court disapproved, 151 F. 2d 172-3. In the view of the majority it is suggested that the case of *Kotteakos* can be differentiated from that of Sobell, because in the former "each defendant was interested in obtaining his own fraudulent loan only and not in the success of his fellow-borrowers" (slip op. p. 694). There was no *interest* in the present case, shown or even claimed to have existed, on the part of Sobell, in the success of the atomic-information project.

If the majority's approach be now applied to the fact situations in cases heretofore adjudicated to have involved separate conspiracies, the force of our contention on this rehearing becomes manifest. The *Kotteakos* situation becomes one of "securing fraudulently from the F. H. A. *any and all money* that could be obtained", *Canella* v. *United States*, 157 F. 2d 470, becomes a case of "depriving the United States of the faithful services of Canella on *any and all occasions* that might present themselves"; *Marcante* v. *United States*, 49 F. 2d 156 can be made into a single conspiracy by describing it as one to "violate the Prohibition Act by selling *any and all* alcoholic beverages that might come into the hands of the defendants."

An illustrative situation was presented on petition of defendant Rudy for rehearing in *United States* v. *Liss*, 137 F. 2d 995, 1006, and this court declined to accept the "any and all" method of merger, pressed upon it by the U. S. Attorney there: The majority had held on the original appeal that *Rudy* was in fact in a separate con-

spiracy with two of his co-defendants—but declined to reverse the conviction, under the *Berger* (295 U. S. 78) [fol. 2578] rule. But Rudy's counsel claimed, in petition for rehearing, that since the separate conspiracy had taken place wholly in New Jersey, the venue of the trial was improper.

It became essential for the Government, to defeat Rudy's petition for rehearing, to persuade the court that the several conspiracies to produce narcotics in which Liss and Conte had participated, were in fact one. And so it was argued in effect, in the Government's "Reply to Appellant Rudy's Petition for a Rehearing", on file in this court, that the common purpose of Rudy and the other coconspirators, Liss and Conte, was to supply the illegal narcotics market by *any and all* means. The following was the formulation of the Government's claim: a claim which the court rejected *per curiam* in Rudy's case, but now, under the views expressed as to Sobell, would apparently be adopted:

> "the proof showed a single conspiracy to supply the illicit market of which the activities of Rudy, Liss, and Conte were an integral part. The agreement contemplated by the exploitation of that market by means fair or foul. The conspirators tried different means until they succeeded in accomplishing their objective" (Government's "Reply", p. 1).

We respectfully submit that rehearing is appropriate here because of the mischief of the "*any and all*" approach in making it possible to obliterate all lines between conspiracies, and in view of the specific rejection of this approach by this court in *United States* v. *Liss*, supra.

Role of the Jury: The majority of the court, without a statement of its views on the point,* permits the decision below to stand, despite the interference with the role of the jury, in the court's instructions on the nature of the conspiracy (R. 2355).

It is not possible to discern how it can be said that the jury below found the conspiracy to be unitary, rather than

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* Since the views stated on its behalf were confined solely to whether a single conspiracy *could* have been found.

[fol. 2579] dual, when the court's instructions gave it no choice in the matter. Even in the *Blumenthal* case, the issue was not taken away from the jury, as, we submit, it was below in this case. As the opinion of the Ninth Circuit Court of Appeals pointed out in *Blumenthal*, 158 F. (2d) 883, it was "*the jury*" that "was justified in infering that appellants were parties to a single agreement and conspiracy to commit the offenses charged in the indictment" (at p. 888).

The view of the majority here was based on the assumption that "the jury could and did reasonably find that Sobell consented to the dominant aim, and so became a member of the Rosenberg-Greenglass-Gold Conspiracy" (slip opinion, p. 695).

The issue of "consent" to the dominant aim is much like a question of "intent";—and such a "question of fact • • • must be submitted to the jury." *Morisette* v. *United States*, Jan. 7, 1952, 96 L. Ed. (adv. op.) 180, 196. The "trial court may not withdraw or prejudge the issue", id., p. 197.

The instruction given in respect of Sobell's guilt or innocence necessarily *withdrew and prejudged* the question —the jury was told if he was guilty of any conspiracy, it was of the single, major conspiracy visualized by the trial judge. As Justice Jackson said in *Morisette*, id., p. 197:

> "Had the jury convicted on proper instructions it would be the end of the matter. But juries are not bound by what seems inescapable logic to judges."

II

A premise which hitherto has uniformly and consistently been rejected in our law, has been accepted in the portion of the court's opinion dealing with admission of evidence of political views.

The opinion states:

> "But one may reasonably infer that he is more likely to spy for it than other Americans not similarly devoted" (slip op. p. 682).

[fol. 2580] Such an inference may be permitted by logic: it has heretofore been flatly forbidden by law.

E.G.:

> "It is certainly 'more probable' that a crooked official did steal than if he were an upright one. *Yet our law forbids these very premises.*" (Emph. suppl.) *Railton* v. *United States*, 127 F. (2d) 591.

See also:

> *Wigmore, Evidence*, Sec. 57, p. 454, 456;
> *People* v. *Zackowitz*, 254 N. Y. 192;
> *People* v. *Richardson*, 222 N. Y. 103.

If a premise is forbidden by law, that proscription can not be avoided by the route: "Hence this attitude bears on a possible motive for his spying or a possible intent to do so" (slip op. p. 682). This would open a back door too wide. We respectfully submit that this is an impermissible, conjectural basis of proof whereby an exception will destroy a rule. Proof of another crime has been held admissible to show "intent", etc., *only* when it supplies *direct* proof of a state of mind in issue at a trial.

> "None of these exceptions, when rightly applied, go to the extent of sanctioning the idea that a defendant's propensity to commit crime, or to commit crimes of the same sort as that charged, can be put in evidence to prove him guilty of the particular offense; and to come within the exception there must be some *other real connection* between the extraneous crime and the crime charged. *The transaction must always be similar or substantially so*" (emph. suppl.).
>
> Zoline, *Federal Criminal Law and Procedure*, Sec. 357, p. 297.

The error that appears in the case of such use of political preference, is enhanced in the case of mere political *affiliation*. The absence even of the logical inference of propensity (which the law would forbid applying, even if it existed, *supra*) is allowed to be made up for by the testi-
[fol. 2581] mony of one witness—Bentley—concerning her misdeeds, and gossip concerning the misdeeds of others. Can

it be enough to cure the error of using inadmissible evidence, in support of a forbidden premise, that the jury may have "believed" her? Once, in our country, as Mr. Justice Brandeis pointed out in concurring in *Whitney* v. *California*, 274 U. S. 357, 376, "Men feared witches and burnt women". Can it not be said that to allow jurors to be inflamed by evidence such as Bentley's, permits men who fear spies to burn political dissenters?

The court notes (slip op. p. 676, 705n. 24) the dubious quality of the prosecution's substantive proof. Is its appellate function exhausted by suggesting waiver of trial by jury when the death penalty is at stake, and permitting proof of a dubious order to be reinforced by "highly inflammatory" evidence yielding "marked ill-will" for defendants (slip op. p. 683)? Candor compels recognition that neither motive nor intent were issues presenting difficulty to the prosecution, if it had proved the acts charged below by satisfactory evidence; the political evidence ostensibly offered to show intent had preponderantly a prejudicial purpose. This court, Chief Judge Hand writing the opinion, did not suggest that the defendant, Krulewitch, charged with illicit interstate traffic in women, should waive a jury trial (*United States* v. *Krulewitch*, 145 F. 2d 76, 80) nor did the United States Supreme Court suggest a possibly similar course to the defendant charged with murder (*Shepard* v. *United States*, 290 U. S. 96, 104). They agreed that "when the risk of confusion is so great as to upset the balance of advantage, the evidence goes out" (*id.*).

III

The court has accepted, so far as we can discern from the opinion, our contention that the pretrial rulings on our motion for a bill of particulars were erroneous, and yet appears inadvertently to have omitted to rule on the effect of this error.

[fol. 2582] The opinion shows:

> a. "Defendant Sobell made a motion for a bill of particulars. The Government's answering affidavit charged Sobell with five overt acts made in furtherance of the conspiracy, all consisting of 'conversations' with Julius Rosenberg on various dates" (slip op. p. 668).

b. "The Rosenbergs, like Sobell, might have requested such a bill" (of particulars) (slip op. p. 674, n. 2).

c. "Sobell's counsel argued that on the basis of the indictment and information obtained from an unsuccessful attempt to get a more enlightening bill of particulars, it was impossible for Sobell to ask for a severance earlier on these grounds. Sobell's position seems well taken * * *" (slip op. p. 692 n. 15).

To say that Rosenberg should have asked for a bill of particulars would seem to indicate that one should have been granted. To say that Sobell's position was "well taken" seems to indicate error below in the denial of adequate particulars. To affirm in the face of such error would not be just, unless it could be said that Sobell was not "harmed" by the error.

But the court's opinion recognizes that it was "prejudicial" for Sobell to have been "jointly tried with major atomic energy spies". Even assuming the correctness of the holding of the majority here, as to a single conspiracy, Sobell should still have been permitted to invoke the discretion of the trial judge under Rule 14, F. R. C. P., in requesting a severance of his trial. Such a severance would have been permissible even if there had been a single conspiracy, cf. *Hale* v. *U. S.*, 25 F. (2d) 430.

It seems that we were not sufficiently articulate in our argument on this point, Sobell's, main brief, pp. 33-4. Our contention was not merely, as implied in footnote 15 of the court's opinion, with respect to a question of "waiver", it was an affirmative argument that the harm to Sobell in denying him an adequate bill of particulars *constituted in itself reversible error.*

[fol. 2583] It is surely arguable that it would have been within the discretion of the trial judge to grant Sobell a severance, even if the conspiracy were "single", *cf. Haupt* v. *United States*, 136 F. (2d) 661, 673-4. For this reason we argued for reversal:

> "The question therefore, is not whether or to what extent discretion has been abused, but whether there was error in the pre-trial rulings on the indictment

and request for a bill of particulars, in that they had the necessary effect of denying opportunity even to seek the exercise of discretion."

If Sobell was not entitled to a more adequate bill of particulars than he received in this case, Rule 7(f) F. R. C. P. may as well be rescinded. And it is in the interests of the sound administration of criminal justice that trial judges be reminded that there is a limit to the tendency—which approaches, with some, a habit—of denying, out of hand, motions under Rule 7(f).

Conclusion

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the district court be upon further consideration reversed.

Respectfully submitted, Harold M. Phillips, Edward Kuntz, Attorneys for Appellant Sobell.

Harold M. Phillips, Edward Kuntz, Howard N. Meyer, of Counsel.

[fol. 2584] Certificate of Counsel

We, counsel for the above named appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, New York, March 11, 1952.

Harold M. Phillips, Edward Kuntz.

[fol. 2585] In United States Court of Appeals for the Second Circuit

United States of America, Appellee

v.

Julius Rosenberg and Ethel Rosenberg, Appellants

Before Swan, Chief Judge, and Chase and Frank, Circuit Judges

Opinion on Petition for Rehearing—April 8, 1952

Emanuel H. Bloch, for appellants Julius Rosenberg and Ethel Rosenberg.

Frank, Circuit Judge:

In their petition for rehearing, the defendants, for the first time, urge as pertinent that portion of Article III, Section 3 of the Constitution, which provides: "Treason against the United States, shall consist only in levying war against them or in adhering to their enemies, giving them [fol. 2586] aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." The Rosenbergs, as we understand them, rest two arguments on this provision.

(1) The first runs thus: (a) Had the defendants been indicted and tried for giving aid to an "enemy," the crime charged would have been treason, and they could not have been convicted unless the trial judge instructed the jury as to the two-witness rule and told the jury specifically the overt act or acts which a jury must find in order to justify a verdict of guilty.[1] (b) Here the defendants were indicted and tried for giving aid to a country which was not an "enemy." (c) Consequently, the crime of which they were accused was of the same kind as treason—but of a lesser degree. (d) The constitutional safeguards applicable to a trial of the greater crime of this kind must

[1] *Cf.* our analogous holding in *United States* v. *Remington*, 191 F. (2d) 246 (C. A. 2), with reference to the similar two-witness (or one corroborated witness) rule applicable to proof of an overt act in a perjury trial.

be applied to the lesser. (e) But here there were no such safeguards, since the trial judge did not give the instructions constitutionally required in a treason trial.

The Supreme Court's decision in *Ex parte Quirin*, 317 U. S. 1, 38, disposes of this contention. There the defendants, including Haupt and Burger, United States citizens, were held guilty of violating the article of War which make it a crime, punishable by death, for an enemy belligerent to pass our boundaries without uniform or other insignia signifying belligerent status. Admittedly, the conduct constituting this crime would also, in the case of Haupt and Burger, have constituted treason, but this crime of which the defendants were accused was more specific than treason. The Supreme Court (of its own motion) [fol. 2587] raised, and then rejected, the argument that, on this account, the procedural requirements of a treason trial must be, and had not been satisfied. The Court said: "The argument leaves out of account the nature of the offense which the Government charges and which the Act of Congress, by incorporating the law of war, punishes. It is that each petitioner, in circumstances which gave him the status of an enemy belligerent, passed our military and naval lines and defenses or went behind those lines, in civilian dress and with hostile purpose. The offense was complete when with that purpose they entered—or, having so entered, they remained upon—our territory in time of war without uniform or other appropriate means of identification. For that reason, even when committed by a citizen, the offense is distinct from the crime of treason defined in Article III, section 3 of the Constitution, since the absence of uniform essential to one is irrelevant to the other. *Cf. Morgan* v. *Devine*, 237 U. S. 632; *Albrecht* v. *United States*, 273 U. S. 1, 11-12." This ruling has been criticized. See *e. g.*, Hurst, *Treason in the United States*, 58 Harvard Law Rev. (1945) 395, 421.[2] But this ruling

[2] Hurst commented: "On the other hand, where the defendant is charged with conduct involving all the elements of treason within the constitutional definition, and the gravamen of the accusation against him is an effort to subvert the government, or aid its enemies, it would seem in disregard of the policy of the Constitution to permit him

[fol. 2588] binds inferior courts such as ours.[3] In the *Quirin* case, the absence of uniform was an additional element, essential to Haupt's non-treason offense although

to be tried under another charge than 'treason.' However, the decision in Ex parte Quirin casts considerable doubt on the validity of this analysis."

After quoting that passage from that opinion which we have quoted above in the text, Hurst continued: "The decisions cited as analogies by the Court are the now standard authorities holding that the double jeopardy clause of the Constitution is not violated by conviction for two or more offenses which are in substance part of the same criminal transaction, but which involve different elements in the allegation. It is not a convincing technique of interpretation to apply to a constitutional guaranty having its own history of policy a formal test developed under a different clause of the Constitution, with no demonstration that the policies behind the respective clauses are so similar as to be fulfilled by the same criterion. The double jeopardy clause is historically a guaranty against abuse of the law enforcement machinery as such, without reference to abuses peculiar to any one of the major types of crime. When the Constitution singles out the offense of treason as subject to special abuse, citation of a highly technical rule developed by judicial construction out of the general guaranty is in itself little evidence that the peculiar dangers against which the special guaranty was erected have been avoided. Though the type of offense charged against the American citizen in the saboteur group is a very clear case of treason, it is also within the category of charge the abuse of which was feared by the framers. The 'absence of uniform' noted as the essentially distinct element of the offense under the law of war made the defendant's conduct more dangerous simply because it enabled him to appear as what he was—one of the body of citizens. And it was citizens that the limitations of the treason clause were intended to protect."

[3] The defendants suggest that the *Quirin* decision, because it involved an appeal from a military tribunal of a conviction for an offense against the laws of war, "was based alone on a resolution of the conflict of the jurisdiction of military and civil authority." We do not read the opinion that way. See Hurst, *supra*, at 422, note 135.

irrelevant to his treason; in the *Rosenbergs'* case, an essential element of treason, giving aid to an "enemy," is irrelevant to the espionage offense.

(2) The Rosenbergs present a second argument, which is a variant of the first and is as follows: (a) Traditionally, and in this country by statute, the courts have been authorized to impose the death penalty for treason. (b) To authorize such a sentence for a similar but less grave offense, in the trial of which there are omitted the guaranteed safeguards of a treason trial, is to permit "cruel and unusual" punishment in violation of the Constitution. (c) That part of the Espionage Act which authorizes the death sentence is therefore unconstitutional. (d) Accord- [fol. 2589] ingly, the trial judge should be directed to reduce the sentence.[4]

This argument, we think, involves an unfounded assumption, *i. e.*, that Congress will always authorize the death sentence for treason. Without that assumption the argument would compel the strange conclusion that, if Congress, in its discretion, authorized a maximum twenty-year penalty for treason, no greater punishment could be given for espionage, sedition or a similar crime without its

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[4] See Hurst, *supra*, at 423: "There is the possibility that Congress might be restrained by the constitutional ban on cruel or unusual punishments from imposing the highest penalties for certain conduct, unless it were held to mount to the level of treason." In a footnote, Hurst adds: "A penalty may be 'cruel and unusual' because unreasonably disproportionate to the offense. Weems v. United States, 217 U. S. 349 (1910); see Chambers v. Florida, 309 U. S. 227, 236 (1940). The contention that severe penalties possible under sedition acts are so disproportionate as to violate the Eighth Amendment has not met with success, and it seems that no legislative excess short of including capital punishment would run afoul of this provision. Cf. Dunne v. United States, 138 F. (2d) 137, 140 (C. A. 8, 1943), cert. den. 320 U. S. 790; Chafee, Free Speech in the United States (1941) 480. But cf. Herndon v. Lowry, 301 U. S. 242 (1937); Chafee, op. cit. 396. See 1 Schofield, Essays on Constitutional Law and Equity (1921) 421."

becoming "cruel and unusual." Moreover, as the *Quirin* case had the unavoidable consequence of permitting death sentences to be imposed upon the citizen-saboteurs for crimes other than treason, the Supreme Court must there have implicitly rejected the "cruel and unusual" argument. As, however, the Supreme Court did not specifically discuss it, that Court may well think it desirable to review that aspect of our decision in this case.

Petition for Rehearing Denied.

[fols. 2590-2591] In United States Court of Appeals for the Second Circuit

United States of America, Plaintiff-Appellee,

v.

Morton Sobell, Defendant-Appellant

Before Swan, Chief Judge; Chase and Frank, Circuit Judges

Per Curiam Order Denying Petition for Rehearing—April 8, 1952

Harold M. Phillips and Edward Kuntz (Howard N. Meyer, of Counsel) for appellant.

Per Curiam:

Petition for rehearing denied.

T. W. S., H. B. C., C. JJ.

[File endorsement omitted.]

[fols. 2592-2593] In United States Court of Appeals, Second Circuit

[Title omitted]

Order Denying Petition for Rehearing—April 8, 1952

A petition for a rehearing having been filed herein by counsel for the appellants,

Upon consideration thereof, it is
Ordered that said petition be and hereby is denied.
Alexander M. Bell, Clerk.

[fols. 2594-2595] In United States Court of Appeals, Second Circuit

[Title omitted]

Order Denying Petition for Rehearing—April 8, 1952

A petition for a rehearing having been filed herein by counsel for the appellant,
Upon consideration thereof, it is
Ordered that said petition be and hereby is denied.
Alexander M. Bell, Clerk.

[fol. 2596] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 2597] Supreme Court of the United States, October Term, 1951

No. —

Julius Rosenberg and Ethel Rosenberg, Petitioners,

vs.

The United States of America

Order Extending Time to File Petition for Writ of Certiorari—April 30, 1952

Upon consideration of the application of counsel for petitioners,
It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 7th, 1952, and it is further ordered that the mandate of the United States Court of Appeals for the Second Circuit be stayed pending final

disposition of the petition for writ of certiorari, providing the petition is filed within the time as extended.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.

[fol. 2598] Supreme Court of the United States, October Term, 1951

No. —

Morton Sobell, Petitioner,

vs.

United States of America

Order Extending Time to File Petition for Writ of Certiorari—April 30, 1952

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 7th, 1952, and it is further ordered that the mandate of the United States Court of Appeals for the Second Circuit be stayed pending final disposition of the petition for writ of certiorari, providing the petition is filed within the time as extended.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG,
Petitioners,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EMANUEL H. BLOCH,
Attorney for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG,
Petitioners,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners, Julius Rosenberg and Ethel Rosenberg, pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit, entered February 25, 1952 (R. 1640), rehearing denied April 8, 1952 (R. 1709), affirming judgments in the District Court for the Southern District of New York, convicting the petitioners of conspiracy to violate Section 32(a) of the United States Code (now 18 U. S. C. 794), and imposing upon them the sentence of death (R. 27, 28).

Opinion Below

The opinion of the Court of Appeals appears in the record at R. 1640 and R. 1709. It is reported in 195 F. 2d 583.

Summary Statement of the Matter Involved

The petitioners were convicted, together with Morton Sobell, a co-defendant, of having conspired with Anatoli Yakovlev, a Soviet national, Harry Gold, and David and Ruth Greenglass, during World War II and for some years thereafter, to transmit information "relating to the national defense" to the Soviet Union, with the intention to advantage that nation, although not to injure the United States (R. 2-4, 27, 28, 30).

The trial was severed as to the defendant Yakovlev (R. 41), who had left the United States in 1946 to return to his native land, under circumstances which negative flight (R. 945-47), and as to David Greenglass (R. 175-76), upon his plea of guilty to this indictment. Harry Gold and Ruth Greenglass, named as co-conspirators, were not named as co-defendants (R. 2-4).

The record demonstrates that this case posed a delicate balance between guilt and innocence. The framework of the dragnet conspiracy indictment was filled in by accomplice testimony, held together by a few thin strands of circumstantial evidence. Counterposed against the cohesive defense of the petitioners, there was presented a close issue of fact for the determination of the jury, which could have returned, with reason, a verdict of acquittal.

The petitioners, Julius Rosenberg and his wife, Ethel, in their early thirties, are the parents of young sons of five and nine (R. 1051-52, 1295). They were educated in the public school systems of New York City and were graduated into the routine of earning a livelihood for themselves, and upon marriage, for their family (R. 1052-63, 1294-1307). The anonymity of the commonplaces of work, child-rearing, and civic obligations (R. 1306) clothed them until the charges herein cast them into the glare of public note.

The main concern of the prosecution was the theft of atomic-bomb information stolen from the Los Alamos Project and siphoned to the Soviet Union.

The case burst upon the public in 1950, when the relations between the Soviet Union and the United States, strained over the course of the preceding years, had reached a critical stage. The arrests compounded the shock to the national mind which had been publicly informed the year before that the Soviet Union had mastered the "know-how" of the atomic bomb.

In this supercharged atmosphere, the mere accusation was enough to arouse the deepest passions and hostility against these petitioners. Their pleas of not guilty and the concomitant presumption of innocence were further burdened by the prosecution's advertisement of a proposed showing of their overwhelming guilt.

The prosecution heralded one hundred and thirteen names on its panel of witnesses. There were included: (1) world renowned atomic scientists; (2) F. B. I. agents responsible for the investigation of the case; (3) friends of the petitioners, purportedly their cohorts in Soviet spying activities (R. 51-52).

The alembic of careful scrutiny reduces to insubstantiality the pretensions of the invulnerability of the Government's presentation. None of the above groupings was called to testify at the trial. Not one iota of evidence, except the accomplice testimony of David Greenglass and Ruth Greenglass, his wife, was introduced to prove the participation of the petitioners in the main matter of the charge or even their presence at the places where these accomplices asserted the conspiracy was hatched or furthered.

"Doubtless", as the Court below correctly perceived, "if [the Greenglass] testimony were disregarded, the conviction could not stand." (R. 1648).

The general unreliability of accomplice testimony is confirmed by the nature and character of the Greenglasses' story.

David Greenglass is the youngest brother of Ethel Rosenberg (R. 395, 1294). He is a self-confessed espionage agent (R. 425-29, 438-66, 489-500), whose illicit activities during his army career, brought cash returns (R. 450, 459, 496, 705, 722-26).

Ruth Greenglass is also an admitted spy (R. 678-705), who knowingly appropriated the venal fruits of her husband's criminality (R. 681, 701-02, 705, 710, 713, 721-26, 732).

Trapped, both co-operated with[1] and testified for the Government, actuated either by hope and desire or by design to avoid or mitigate punishment for their malefactions (R. 556-67, 594-608, 715-21, 729-47, 757-61, 780, 784-86, 792-93). Their objective was achieved. Ruth was immunized from prosecution and is, as always, a free woman (R. 593, 740). Upon his plea of guilty, David obtained a trial severance and was awaiting sentence at the time of trial. Eventually he received a comparatively lenient sentence of 15 years (R. 1638).

Ruth and David Greenglass related their complicity in a Soviet espionage conspiracy to secure and transmit infor-

[1] There were different versions as to the time of David Greenglass' conversion to concord with the government. Greenglass testified his co-operation commenced immediately upon his apprehension (R. 577-78). The prosecutor disclosed, for the first time, on the day of Greenglass' sentence, which occurred after the conviction and sentence of the Rosenbergs, that Greenglass' co-operation came only after O. John Rogge, his counsel, entered into negotiations between the Greenglasses and the Government (R. 1623, 1628-29). Had the prosecutor been as candid at the trial as on Greenglass' sentence, the defense could have been enabled to inspect and introduce in evidence his first written statements to the authorities belying his alleged co-operation, and thus lay before the jury important impeaching evidence. In any event, the prosecutor's conduct is questionable under *Berger* v. *United States*, 295 U.S. 78 (1935).

mation concerning the atom-bomb being constructed at the Los Alamos army installation at which he was stationed as a soldier machinist. Their self-involvement was corroborated by oral (R. 821-31) and documentary evidence (G. E.: 5, 9A & B, 16, 17). Their accusations, however, that Ethel Rosenberg and Julius, her husband, were similarly implicated, and, indeed moved them to join this illegal combine are without any corroboration and lack persuasiveness.

The record, in baring David Greenglass' ready knowledge of restricted information at the precise moment of the enlistment of his espionage services, at least, makes equivocal the Greenglasses' claim to seduction by the Rosenbergs (G. E.: 1, 19, 20, R. 398-99, 405-12, 879-902). Their strain to temper their voluntary confederation in spying, and to assume the role of pawns in the hands of the Rosenbergs, in a conspectus of acts which speak more eloquently to the contrary, invites skepticism (R. 424-25, 496, 538-39, 553, 679-80, 682-83, 703, 711, 715-21).[2]

The trustworthiness of their evidence to prove the Rosenbergs' culpability is further attenuated by the singular circumstance that they laid the incriminating episodes to conversations solely between themselves and the Rosenbergs. Thus, this testimony, the heart of the Government's case, was placed beyond the pale of test by the normally comparative standards of independent corroboration.

The spy plot unfolded by the Greenglasses, Ruth corroborating David with studied rehearsal (R. 682-83, 727-28), is predicated upon the following recital. (1) In November, 1944, prior to her departure to visit David at his station in

[2] Within a week of the sentence of the Rosenbergs, a highly authoritative government report rated David Greenglass among the foremost atomic espionage agents, and subordinated the Rosenbergs to a minor place. *Report on Soviet Atomic Espionage*, Joint Comm. on Atomic Energy 82nd Cong., 1st Sess. (U.S. Gov't. Printing Office, 1951) p. 7. *Accord: The Shameful Years*, House Comm. on Un-Am. Activities (U.S. Gov't Printing Office, 1952).

New Mexico, Ruth was solicited by the Rosenbergs to induce David to transmit specific information concerning the Los Alamos project: "location, personnel, physical description, security measures, camouflage and experiments" (R. 678-81). Ruth was asked to memorize the data and, on return, relay the information to Julius Rosenberg for ultimate transmittal to the Soviet Union (R. 426). At Albuquerque, David, after an ephemeral refusal, gave Ruth the requested data, readily known to him despite its secrecy (R. 423-27, 683-85). (2) In January, 1945, David, on furlough, delivered to Julius Rosenberg in New York a fuller written report on the project, including a sketch of a lens mold used in the atomic experimentations (R. 428-29, 438-39, 686). (3) A few nights later, the Greenglasses were introduced to a Mrs. Sidorovich at a social visit to the Rosenberg home. After the departure of this woman, when the Greenglasses and the Rosenbergs were alone with each other, Julius described her as a potential courier to collect information from David in New Mexico. To perfect identification of the actual messenger, the side of a Jello-box was cut into two parts, one part of which was kept by Ruth and the other, retained by Julius, was to be on the person of the emissary (R. 443-50, 686-90). At this meeting, Ethel admitted she aided Julius in his espionage work as a typist (R. 450-51, 690-91). (4) In June, 1945, Harry Gold arrived at the Greenglass apartment in Albuquerque with the salutation "I come from Julius" and produced a portion of the side of a Jello-box that matched the one kept by Ruth (R. 455-57, 699-700, 825). Gold testified his part of the side was given to him by his Soviet superior, Yakovlev (R. 822). David delivered to Gold information about personnel at the project who were potential recruits for espionage and another sketch of a section of the lens mold, indicating the principles of implosion used in this phase of bomb con-

struction (R. 459, 828). (5) In September, 1945, on another furlough in New York, David turned over to Julius a sketch of the cross-section of the atom-bomb and a 12-page exposition covering the functions of its component parts,[3] both of which, despite his stunted educational background (R. 610-15), he claims to have composed from memory of scraps of oral information gleaned at the project (R. 493, 495-98, 609, 613, 619-21).[4] While Ethel typed the material, Julius confided he had pilfered a proximity fuse for the Soviet Union from a factory at which he was employed (R. 510). (6) In the post-war years, Julius and David were co-entrepreneurs in the machine shop business (R. 514, 708-09). In the course of this relationship, and in sharp contrast to the acrimony that had developed between Julius and the Greenglasses, David described himself as the repository of Julius' confidences that he still was active on behalf of the Soviet Union and had been rewarded for his efforts by gifts and a certificate from the Soviet Government granting him special privileges in Russia (R. 514-23). (7) In 1950, after the arrest, in England, of Dr. Klaus Fuchs, an English scientist, accused of stealing atom-bomb information at Los Alamos for the Soviet Union, Julius urged David to flee the country and promised to subsidize the flight (R. 523). Julius renewed his imprecations after Gold's arrest and with a clairvoyance that jars the sophisticated mind predicted that David "would be . . . picked up between June 12th and June 16th" (R. 525-26, 709). [David was arrested on June 15, 1950 (R. 567).] He gave David $1,000 to pre-

[3] This testimony was impounded by the trial court (R. 499) but may be brought before this Court at its request.

[4] That there is incredulity about this scientific evidence is attested by the critiques of scientists appearing since the termination of the trial. *See: Life*, March 26, 1951, p. 51; *Scientific American*, May, 1951, p. 33. The Government itself doubts its reliability by questioning the likelihood of David's having transmitted anything of substantial value. *Report on Soviet Atomic Espionage, supra.*

pare for the journey, adding that he and his family were likewise intending to escape (R. 526, 529, 710, 713). When they accepted the $1,000, David and Ruth had already decided to remain in the country and co-operate with the Government (R. 711). Their subsequent taking of family passport photos (R. 530-32, 711-12), suggesting their preparations for flight, indicates less their remorse and desire for atonement, than calculated maintenance of avenues for escape from retribution. About a week later, Julius primed David on flight plans and gave him an additional $4,000 for flight purposes (R. 532-33, 713). Their disingenuousness was more fully exposed by their sedulous secretion of the contraband $4,000 from the F. B. I. for their own use,[5] even after David's professed prompt confession (R. 732, 758-61, 794-97).

The lack of supporting oral testimony was not compensated by the quality of documentary corroboration. The exhibits relating to the crux of the conspiracy—the Jello-box, sketches of the lens mold, cross-sections of the atom-bomb (G. E.: 4A & B, 2, 6, 7, 8)—were replicas which were prepared for trail purpose by David after his arrest or during the trial (R. 439-41, 460-61, 463); they have no probative weight independent of the veracity of his parole testimony. The other exhibits were "puff," dealing with non-controverted matters.

The other Government evidence has already been relegated to insignificance by the Court below (R. 1648). This testimony follows:

Max Elitcher, a Navy Department engineer and a casual acquaintance of Julius Rosenberg in college days, testified Rosenberg attempted, on several occasions, to interest him in espionage. The initial overture is alleged to have been

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[5] This $4,000 was given to O. John Rogge, the attorney for the Greenglasses, as a fee, the day after David's apprehension (R. 732, 794).

made directly within a few minutes of a visit, the first communication between them in six years (R. 214, 296-99). His continued wooing of Elitcher over a period of four years, is likewise improbable in the face of the admitted facts that Elitcher never promised to pass nor ever passed any information to anyone (R. 243, 251-52, 256-58, 276, 353-60). Elitcher's pliant obeisance to officialdom and his resultant trial testimony is illumined by the witness' admission of fear, bordering on panic, when the authorities implied the presentation against him of espionage and well-founded perjury charges (R. 277-83, 361). His hope for immunity was rooted in reality; he was never prosecuted for any crime (R. 292-96, 346-47).

Elizabeth Bentley, a notorious and self-styled Soviet agent unconnected with the instant alleged conspiracy, supplied testimony, whose legal purport is still obscure, that she received certain telephone calls in years prior to the inception of the charged conspiracy from a person who described himself as "Julius" (R. 991).

Harry Gold served to corroborate the enmeshment only of the Greenglasses (R. 821-31). His testimony reveals that he neither knew the Rosenbergs to be in the conspiracy, nor, indeed, that he had ever met them.

The ability of these subsidiary witnesses to corroborate, at all, the Rosenbergs' participation in the conspiracy charged, was dependent on resort to flimsy circumstantial evidence. The accomplice, Gold, who had direct contact with the "Russians", could supply the sole link of the Rosenbergs with them, only by the inference from the wanderings of one side of the Jello-box (R. 822). Neither Gold nor Bentley knew the actual person to whom they referred as "Julius" (R. 817-45, 964-1024). The proposition which the prosecution advanced that it is inferrable from the identity of "Julius" with the given name of the petitioner,

Julius Rosenberg, that "Julius" was this petitioner, is negatived by the direct testimony of these same witnesses that the practice of trained and experienced spies, including themselves, was to take care to use assumed names (R. 815, 826, 985).

Evidence treating with the alleged political views and associations of the petitioners threaded the record and constrained the petitioners to put them in issue. This proof was urged and received on the theory that the "communist" character of the views and associations was relevant to show motive but was submitted to the jury solely on the requisite statutory intent "to advantage" the Soviet Union (R. 200-01, 218-22, 1022, 1558).

To lay the foundation for the admission of this evidence, the prosecution imported Elizabeth Bentley to double in brass. In stating her qualifications as an "expert", she spread before the jury her lurid career of an earlier period (R. 965-82). Only the unsavory details of her personal misdeeds make the connection, which was the design of this testimony, between membership in the Communist Party and militarily advantaging the Soviet Union (R. 965-82, 998, 1013-14). Her "expert" testimony is neither a generalization that extends the applicability of her experience to all Party members or a specification to reach the petitioners.

The Government, under the aegis of the trial court, made "communism" the whipping boy of the proceedings. It was featured in the prosecutor's opening (R. 180-82) and recurred, whether aptly or not, with unmitigated persistence, during the entire course of the trial (R. 189, 203-05, 215, 224-33, 240-42, 352-53, 414, 418-20, 423, 679, 789-91, 965-96, 1078-80, 1171, 1175, 1178-81, 1183-86, 1239, 1277, 1302-04, 1346-54, 1372). The Government, on this subject, following the tactic of re-asking questions already asked and answered (R. 1171, 1178-79, 1277, 1309), and pressing lines

of interrogation that it came to know would draw assertions of the Fifth Amendment privilege, which, when raised, went unchallenged (R. 1160-65, 1175, 1183-92, 1277, 1303-05, 1309, 1353-54, 1371), displayed a seemingly greater interest in asking the questions than in receiving the answer. In his summation, the prosecutor again invoked "communism" to bind his fragmented evidentiary structure (R. 1515, 1516, 1517, 1519, 1520, 1528, 1529, 1530, 1531, 1533, 1535), and, on this behalf, excoriated the petitioners as "traitors" (R. 1517, 1518, 1535).

The Court below acknowledged that "such evidence can be highly inflammatory in a jury trial. This Court and others have recognized that the Communist label yields marked ill-will for its American wearer" (R. 1655-56). It further noted that the admonition of the trial judge to the jury "not to determine guilt or innocence of a defendant on whether or not he is a Communist" might be "no more than an empty ritual without any practical effect upon the jurors . . ." (R. 1656). Indeed, the persistent intrusion of this "communist" evidence along with the evidence on the substantive charge makes it difficult to determine whether the verdict was the product of a sober estimation of the Rosenbergs' culpability or a triumph of political prejudice.

The Rosenbergs testified in their own defense. They denied, generally, and in detail, every part of the evidence introduced by the Government to connect them with a conspiracy to commit espionage (R. 1051-1159, 1281-82, 1293-1307, 1311-44). They showed that, during the years in question, they lived a steady, normal existence (R. 1052-63, 1294-1307). Even as late as May, 1950, during the period when the Government claimed the Rosenbergs were preparing for flight, Julius depleted his meager cash reserves and obligated himself, on a long term basis, to buy out the holder of the preferred stock of the business in which he was en-

gaged, to gain its absolute ownership and control (R. 1117-18, 1142-43).

Ethel, upon the birth of their two sons, ceased her outside employment, and discharged the responsibility of mother and housewife (R. 1296, 1304-07). Julius, a graduate engineer, held a regular succession of low-salaried positions until his entrance into the machine shop enterprise with David Greenglass (R. 1052-63). The modesty of their standard of living, bordering often on poverty (R. 1052-58, 1113, 1118, 1297-1302), discredits David's depiction of Julius as the pivot and pay-off man of a widespread criminal combination, fed by a seemingly limitless supply of "Moscow gold" (R. 514-23, 526, 529, 710, 713).

Their knowledge of the existence of an atom-bomb came with its explosion at Hiroshima, and David's connection with it at Los Alamos, resulted from his revelations on his discharge from the Army in 1946 (R. 1066-71, 1312, 1332-36).

They knew neither Gold nor Yakovlev, their alleged co-conspirators, nor Bentley (R. 1073, 1091, 1095-96, 1523)—facts which the Government did not controvert.

Their relations with Sobell, their co-defendant, were confined to sporadic social visits (R. 1146-49, 1157). Following a complete six-year break, after graduation from college, their ties with Elitcher assumed similar, but even more tenuous, character (R. 1148-59).

Their relationship with the Greenglasses, both during and after the war, was on a purely familiar and social level (R. 1067-68, 1084, 1103-04, 1322-23), the cordiality becoming strained to the breaking, however, with the advent of bitter quarrels which arose in the course of their post-war business ties (R. 1119-20).

In 1950, Julius was negotiating to purchase David's stock in their co-enterprise (R. 1113-18), David having abandoned active participation in the business a few months before

(R. 1113). The bargaining was heated and protracted (R. 1113-18). Finally, in May, the parties arrived at an understanding. The stock was assigned and the purchase price was fixed, although the time of its payment appears to have remained in dispute (R. 1115). In the middle of May, David, agitated, asked Julius for a few thousand dollars. When Julius refused because his debt on the purchase price of the stock was not due and because, in any event, he did not have the money, David asked Julius, as an alternative, to procure a small-pox vaccination certificate from his doctor and to ascertain the injections required to enter Mexico (R. 1118-19).

Rebuffed by David in his inquiries about the source of David's apparent troubles, Julius, remembering Ruth's concern in the war years that David had stolen things from the Army, attributed David's plight to this account (R. 1120-21, 1334). The pull of family ties prevailed over the strained relationship, and Julius felt under moral obligation to lend comfort to David (R. 1120, 1127-28). Julius found out from his doctor the information about travel to Mexico but was unsuccessful in obtaining the desired certificate (R. 1123). David, so informed by Julius, stated he himself would take care of the matter (R. 1125).

Near the end of May or early June, David, in a more agitated state, repeated his request of Julius for a "couple" of thousand dollars, and, when Julius refused, told him "You are going to be sorry" (R. 1128-30). In short, no monies were given to David for flight or any other purposes (R. 1100-03). Nor did Julius or Ethel make any preparation to flee this country. Julius continued to conduct his business in a normal way and the pedestrian routine of living of the Rosenberg family continued even to the day of their arrest (R. 1142-43).

The sharpness and closeness of the factual issues necessi-

tate a resolution of the questions as to whether or not the conviction of the petitioners was secured with due process and with that scrupulous fairness to which they were entitled and urge review by this Court.

At the opening of the trial, motions were made by the petitioners to dismiss the indictment on constitutional grounds and for failure to state a crime (R. 160-71). At the close of the government's case, these motions to the indictment were renewed (R. 1040-41); further motions were made for a mistrial on the ground of the admission of improper and prejudicial evidence (R. 1037-40), as well as a motion for acquittal (R. 1051). All were denied (R. 173-74, 1040-41, 1051). At the close of the trial, the petitioners reasserted each of these motions (R. 1441-46), and prayed for the additional relief (1) that a mistrial be granted on the ground that the judge's conduct had deprived them of a fair and impartial trial (R. 1442); and (2) that the testimony of the witness Schneider be stricken from the record (R. 1446). Each of these motions was denied (R. 1442, 1443, 1446). During the entire trial, questions concerning the admission and exclusion of evidence were raised by numerous objections and motions to strike.

Immediately prior to sentence, motions in arrest of judgment and for a new trial were interposed on all of the grounds heretofore set forth (R. 1586), and denied (R 1586).

Jurisdiction

The judgment of the Court of Appeals was entered on February 25, 1952, rehearing denied April 8, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254. By order of Mr. Justice JACKSON, of April 30, 1952, the time to file this petition was extended to and including June 7, 1952 (R. 1714-15).

Statute Involved

The indictment was founded upon Section 32(a) and 34 of Title 50 of the United States Code.

Section 32 (a) provides:

> "Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers or transmits, or attempts to, or aids or induces another to, communicate, deliver or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, codebook, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided* that whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; . . . ."

Section 34 provides:

> "If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section 88 of title 18."

Sections 32 and 34 were combined and revised, and now constitute and are replaced by Section 794 of Title 18 of the United States Code (effective June 25, 1948).

Questions Presented

1. Whether Sections 32(a) and 34 of Title 50 of the United States Code, on their face and as construed, are so vague and indefinite, as to violate petitioners' rights under the First and Fifth Amendments.

2. Whether the indictment herein fails to state a crime in violation of petitioners' rights under the Sixth Amendment.

3. Whether the conviction of the petitioners rests on an evasion of the Constitutional provisions with regard to treason (Art. III, Sec. 3).

4. Whether the conduct of the trial judge deprived the petitioners of a fair trial in violation of the Fifth and Sixth Amendments, in that:

(a) by a course of conduct, he displayed bias against the petitioners and conveyed to the jury his belief in their guilt.

(b) by instructions to the jury, he licensed it to take into consideration factors outside of the evidence.

(c) by instruction or otherwise, he presented to the jury a one-sided and distorted view of the evidence.

5. Whether the admission of the following evidence deprived petitioners of their rights under the First, Fifth and Sixth Amendments:

(a) the admission of evidence of lawful opinions, as probative of an element of the crime, in violation of petitioners' rights under the First Amendment.

(b) the admission of evidence tending to establish petitioners' membership in an association, as, *per se*, probative of an element of the crime, in violation of petitioners' rights under the First Amendment.

(c) the admission of the evidence, set forth in (a) and (b) above, having no relevance other than to propensity to commit the crime charged, and being highly inflamma-

tory and prejudicial in nature, in violation of petitioners' right to a fair trial under the Fifth and Sixth Amendments.

(d) the admission of evidence tending to connect the petitioner, Julius Rosenberg, with "Soviet spies", unconnected with the crime charged, having no relevance other than to propensity to commit the crime charged, and being highly inflammatory and prejudicial in nature, in violation of the petitioners' right to a fair trial under the Fifth and Sixth Amendments.

(e) the admission of proof of the telephone conversations, tending to establish the connection in (d) above, absent a proper evidentiary foundation.

6. Whether the admission of testimony, highly prejudicial in nature, of a prosecution witness, not included in the mandatory list of witnesses, violated petitioners' rights under 18 U. S. C. Sec. 3432.

7. Whether the imposition of the sentence of death was "cruel and unusual" punishment, in violation of petitioners' rights under the Eighth Amendment.

Reasons Why the Writ Should Be Granted

The orthodox reasons for granting the writ of certiorari are present in this case. (1) The case involves important questions of Federal law which have not been, but should be settled by this Court. The petitioners' claim of invalidity of the statute under the First and Fifth Amendments raises questions not decided by this Court in *Gorin* v. *United States*, 312 U. S. 19 (1941), and their challenge to the conviction under the treason clause, and to the sentence under the Eighth Amendment have never before been either raised or decided by this Court. (2) The decision below is, also, inconsistent with applicable decisions of this Court. The decision of the Court below in relation to the sufficiency of the indictment is in probable conflict with an unbroken line of authority in this Court; the introduction of

evidence relating to "communist" beliefs and affiliations is inconsistent with the decisions of this Court in *Haupt* v. *United States*, 330 U. S. 631 (1947); *Schneiderman* v. *United States*, 320 U. S. 118 (1943); and *Michelson* v. *United States*, 335 U. S. 469 (1948). The admission of the Bentley testimony concerning the "Julius" telephone calls also conflicts with the *Michelson* case; and the allowance of the "Schneider" testimony is probably inconsistent with *Goldsby* v. *United States*, 160 U. S. 70 (1895) and *Logan* v. *United States*, 144 U. S. 263 (1892). (3) Finally, the decision below, relating to the conduct of the trial judge, departs, and sanctions such departure by the trial court, from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. This ruling, as well, is inconsistent with the decision in *United States* v. *Murdock*, 290 U. S. 389 (1933).

The concurrence of all of the usual reasons for granting review, manifests the subversion, in this case, of the constitutional strictures against unjust conviction. The precendents established by the lower courts, remolding constitutional prerogatives to vindicate the indictment and conviction here, sap the defenses of all Americans against governmental imposition.

The nature of the charge—conspiracy to traffick in the secrets of atomic armament with the Soviet Union—lent itself to the exploitation of the basic political conflicts of the present era. The relaxation of discipline to bar from the courtroom the heat of the environing political turmoil caught the petitioners in the terrible interplay of clashing ideologies and feverish international enmities.

The voice of our own democratic consciences and the eyes of the world question whether the forfeiture of two lives should have been staked on a proceeding which emanated from political animosities, that were given free rein to overwhelm reasoned deliberation. Whether lives may be

taken at all to accommodate the demands of transient political ends, recurs as a constitutional inquiry and a focus of the thoughts of the civilized world. There is a grave responsibility in this Court to assure that American justice has the continued vigor to afford an accused, under the disability of a passion-arousing charge, a fair chance to defend.

Concerning the Statute

1. The instant case is the first to reach this Court which puts in issue the validity of the espionage act, on its face and as construed, under the First Amendment, and for the first time, raises questions under the Fifth Amendment, not considered by this Court in *Gorin* v. *United States, supra.*

Both the trial court, which first heard the challenge on motion to dismiss the indictment herein (R. 160-71), and the Court of Appeals, in its review (R. 1644-48), reach out to the *Gorin* case to draw from it the license of *stare decisis* to avoid the new consideration demanded by the petitioners' contentions.

Unless, however, this Court is moved to determine these issues, this espionage act, enforcing the acceptance of "secrecy" as the coin of national security, will weaken, rather than strengthen, our defensive power as a nation, and stand as an invitation to government by military junta, sanctioned to enforce a total blackout of the free exchange of information.

Analysis of the statute in the context of the contemporary world in which it is enforced, with a fidelity untainted by the anxiety of unseating a "security" measure, reveals these fundamental political consequences to be a reasonably expected result of its continued operation.

The statute, in terms, prohibits the "communication" of information "relating to the national defense" 50 U. S. C. 32(a).

On its face, the sweep of its embargo on "communication" is so complete as to eliminate the interchange of information between the people of this country and the people of the rest of the world,[6] and to burden and restrain even that between citizen and citizen.[7]

The scope of the term "national defense" has been enlarged by the modern understanding of "total war" to include an area as broad as the national life itself. The very court below, in *United States* v. *Heine*, 151 F. 2d 813, 815 (C. C. A. 2d, 1945) cert. den. 328 U. S. 833, acknowledged this truth. Judge Learned Hand, writing for the majority, stated:

> "... every part in short of the national economy and everything tending to disclose the national mind are important in time of war, and will then 'relate to the national defense'."

The total impact of the statute, as it is written, could permit the creation of an unbroken "national isolationism." *United States* v. *Heine*, *supra*, at p. 816. The foundation upon which sound social and political judgments may be made in the complex of modern society—knowledge of a country's cultural, scientific and industrial capacity and development, the "national mind," its "pacific or belligerent temper"—hidden from alien view, may as well be foreclosed to American eyes. *Ibid.* In an era in which

[6] The statute's proscription refers not only to "foreign governments," but as well to "any citizen or subject thereof." 50 U.S.C. 32(a)

[7] The requirement of "reason to believe" that the information transmitted will be used to the injury of the United States or advantage of a foreign nation, makes every person the insurer of the good character and sympathy to the United States of his communicant. *See* Newman, *Control of Information Relating to Atomic Energy*, 56 Yale L. J. 769, 787 (1947). The fear that a communicant, though a fellow citizen, may be "a representative, officer, agent or employee" of a foreign government, and the inculpatory inferences that may be drawn from this fact, may serve as a prior restraint upon communication, even as between citizens.

government policy and political, social and scientific thinking adhere to the concept that strength rests in the interdependence of nations, the statute, by thus embracing the fatal fallacy that security can be achieved by monopolizing information, is a threat of incalculable harm.

No court has questioned that the literal sweep of the statute's prohibitions represents a "drastic repression of the free exchange of information." *United States* v. *Heine*, *supra*, at p. 815; *see also*: 59 Harv. L. Rev. 617 (1946). This Court, in the *Gorin* case, while seeming to assert that, in spite of their connotation, the words "national defense" have achieved a sufficiently limited denotation [8] "to apprise the public of prohibited activities," nevertheless could not safely rest upon this finding. It was constrained to engraft the purported restriction that:

> "Where there is no occasion for secrecy, as with reports relating to the national defense, published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign nation." *Gorin* v. *United States*, *supra*, at p. 28.

This statement was read by the court in the *Heine* case to mean that where the information which is the basis of the charge is not "secret", at least in the sense that it has been "published by authority of Congress or the military departments," no crime is charged under the statute. To this immunity from prosecution, the court added, "information which the services never thought it necessary to withhold at all." *United States* v. *Heine*, *supra*, at p. 816.

The courts' constructions, however, merely enhance the

[8] The Court's sole criterion for its conclusion is that the words "national defense" were employed in the Defense Secrets Act of 1911 (36 Stat. 1084), the predecessor of the Espionage Act of 1917. It should be noted, however, that no prosecution was brought under its terms, and no case arose in which its terms were the subject of construction.

repressive potential inherent in the naked mandate of the statute. Control of communication, forbidden by the First Amendment to Congress, is judicially conferred upon the military to exercise in both war and peace on terms less restricted than that ever accorded them even in war. *See e.g.: Hirabayashi* v. *United States*, 320 U. S. 81 (1943); *Ex parte Milligan*, 71 U. S. 2 (1866). This power over the dissemination of vital information will permit America's face, at home and abroad, to be drawn in the image of the military censor, and its future course and destiny to be determined by the military hand. *See*: Text of Truman Security Order, *N. Y. Times*, Oct. 5, 1951, p. 12.

The limiting effect of these constructions are, at best, illusory. The authority given to the military to secrete or broadcast "information relating to the national defense," is as broad as the language of the statute itself. The statutory uncertainty is transformed into a regulational uncertainty, to which is added the unpredictability as to what information these departments will classify. *See e.g.*: Government brief in the Court of Appeals, at pp. 9-10 in *United States* v. *Heine, supra;* statement of Assistant Secretary of Defense, Anna Rosenberg, *N. Y. Post*, Jan. 25, 1951.

The statute as it has been construed, therefore, just as the statute on its face, is constitutionally intolerable since it may "permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee" of the First Amendment. *Winters* v. *New York*, 333 U. S. 507, 509 (1948); *Herndon* v. *Lowry*, 301 U. S. 242 (1937); *Stromberg* v. *California*, 283 U. S. 359 (1931).

The court below seeks to shelter the statute from this attack by the assertion of the doctrine that the vagueness of the statute is cured by the requirement of the establishment of "bad faith" (R. 1647). This ruling, however, overlooks the fact that such is not the "scienter" prescribed

by the law. The espionage act requires proof of the specific "intent or reason to believe that the information to be obtained is to be used to the injury of the United States or the advantage of a foreign nation." 50 U. S. C. 32(a).

Yet, the concepts of "injury," "advantage" and "reason to believe," apparently simple on their face, have revealed, in use, that, as guides to conduct and adjudication, they are a source of confusion rather than clarity.

The statute clearly provides that proof, in the alternative, of either "injury" or "advantage" may supply the criminal state of mind under the espionage act. Yet, the *Gorin* case rules that "injury" and "advantage" are synonymous, since "no advantage could be given our competitor or opponent . . . without injury to us," because "unhappily the status of a foreign government may change." *Gorin* v. *United States, supra,* at p. 30. The court in the *Heine* case resisted the theory of the *Gorin* case, adopting the following position:

> ". . . while it is true that it is somewhat hard to imagine instances in which anyone would be likely to transmit information 'relating to the national defense,' which would be injurious to the United States, and yet not advantageous to a foreign power, it is possible to think of many cases where information might be advantageous to another power, and not injurious to the United States . . ." *United States* v. *Heine, supra,* at p. 815.

Faced with precisely the situation contemplated above, the Attorney General of the United States ruled, in the very teeth of the *Gorin* case, that:

> "the fact that the intended use of the information would confer upon a foreign power an advantage subordinate to or identical with that which it would confer on the United States certainly cannot be viewed as bringing the communication within the statutory prohibition." 40 *Op. Att'y Gen'l* 248 (1942).

The *Gorin* case adds to the definition of the intent clauses, the uncertainty stemming from the variability of the classified status of the information communicated (see p. 21, *supra*), and other authorities suggest that the application of the statutory intent will fluctuate with respect to the foreign nation actually the beneficiary. See: *United States* v. *Grote,* 140 F. 2d 413 (C. C. A. 2d 1944); Newman, *Control of Information Relating to Atomic Energy, supra,* at p. 785.

"Reason to believe" being dependent upon each of these factors, partakes of the uncertainty of each.

The divergent interpretations accorded the intent clauses are merely open expressions of the ambiguity which inheres in the statutory language. Their effect is to compound the defects of the language by further confusing it and rendering it useless, as a guide to conduct and adjudication. The question of intent, therefore, rests upon the varying impressions of judges and juries, as to whether certain communications were made with the requisite statutory intent, a finding which "might well be colored by a jury's emotional view of current foreign policy." *See*: 59 Harv. L. Rev., *supra* at p. 618.

The requirements of due process demand that the adjudication of an individual's rights and duties be governed by rules of sufficient objectivity to guard against arbitrary or *ad hominem* results. While the courts may review a conviction to determine whether the statutory intent has been proven [*Dennis* v. *United States,* 341 U. S. 494, 516 (1951)] the statutory definition of intent must provide an adequate warning of the proscribed intent, and mark boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. *Musser* v. *Utah,* 333 U. S. 95 (1948); *Lanzetta* v. *New Jersey,* 306 U. S. 451 (1939); *Connally* v. *General Const.*

Co., 269 U. S. 385 (1926); *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921).

The statutory intent of the espionage act, being so vague and indefinite as to violate due process of law, can have no effect in curing the vagueness of the criminal standards of the statute. The decisions in *Dennis* v. *United States, supra; American Communications Association* v. *Douds*, 339 U. S. 382 (1950); *Screws* v. *United States*, 325 U. S. 91 (1945); *United States* v. *Ragen*, 314 U. S. 513 (1942); *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497 (1925) and *Omaechevarria* v. *Idaho*, 246 U. S. 343 (1918) are inapposite. The statutes which these cases uphold prescribe either a specific intent of well-known meaning,[9] or simply a general requirement of "evil" intent.[10] None of these cases presents a situation in which the intent itself is specifically prescribed, and yet is so vague as to be inadequate as a standard of criminal conduct.

The instant situation is governed by the case of *Herndon* v. *Lowry, supra*, where, in a case involving freedom of speech, the court struck down a statute "general in its description of the mischief and equally general in respect to the intent of the actor . . ." *Id.* at 258.

Examination of this contention of the petitioners was averted by the Court of Appeals on the ground of its belief that this Court would not have decided the *Gorin* case without having made a determination as to the validity of the intent clause (R. 1647). However, since this issue was neither raised by the parties, nor treated with or decided by the Court in the *Gorin* case, not only is the question not foreclosed upon an analysis of the statute under the First

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[9] *Hygrade Provision Co.* v. *Sherman, supra* ("intent to defraud"); *United States* v. *Ragen, supra* ("to evade or defeat" taxes).

[10] *Dennis* v. *United States, supra; American Communications Association* v. *Douds, supra; Screws* v. *United States, supra; Omaechevarria* v. *Idaho, supra.*

Amendment, but as well serves to reopen consideration of the statute under the Fifth Amendment.

In either event, without regard to whether their alleged activities might fall within an area not constitutionally protected by the guarantees of the First Amendment, the petitioners are entitled to the dismissal of the indictment herein, since the statute is, on its face and as construed, violative of the First and Fifth Amendments, and void. *Winters* v. *New York, supra; Herndon* v. *Lowry, supra; Stromberg* v. *California, supra;* Note, *Due Process Requirements of Definiteness in Statutes,* 62 Harv. L. Rev. 77, 86 (1948).

Concerning the Indictment

2. The Court of Appeals accepted the petitioners' contention that an essential element of the statutory crime of espionage is the "secrecy" of the information alleged to be the subject of the conspiracy to commit espionage, in the sense of the *Gorin* and *Heine* decisions. In rejecting petitioners' claimed invalidity of the indictment, grounded on its failure specifically to plead this constituent of the crime, the lower Court's decision comes into direct conflict with decisions of this Court and the well-settled law which prevails throughout the Federal judicial system.

Whether "secrecy" be regarded as a constituent ingredient of the crime, or as the Court of Appeals suggests, an exception to its applicability (R. 1645-46), the indictment, in statutory language which does not specify the "secrecy," does not meet the requirement that it charge every element of the crime, except by the constitutionally inadequte device of inference. *Hagner* v. *United States,* 285 U. S. 427 (1932); *Potter* v. *United States,* 155 U. S. 438 (1894); *United States* v. *Hess,* 124 U. S. 483 (1888); *United States* v. *Carll,* 105 U. S. 611 (1881); *United States* v. *Cruikshank,* 92 U. S. 542 (1875); *United States* v. *Cook,* 84 U. S. 168 (1872).

The enactment of Rule 7(c) of the Federal Rules of Criminal Procedure did not, as the court below indicates (R. 1646), relax this rule. *Carter* v. *United States*, 173 F. 2d 684 (C. A. 10th, 1949); *Robertson* v. *United States*, 168 F. 2d 294 (C. C. A. 5th, 1948); *Frankfort Distilleries* v. *United States*, 144 F. 2d 824 (C. C. A. 10th, 1944), *rev'd on other gr'ds*, 324 U. S. 293; *United States* v. *English*, 139 F. 2d 885 (C. C. A. 5th, 1944). The reasoned decision of the court in *United States* v. *Schneiderman*, 102 F. S. 87 (D. C. S. D. Calif. 1951) contradicts the disposition of the Second Circuit to suspend the operation of this rule where the element is imported by judicial interpretation. *Compare*: *United States* v. *Dennis*, 183 F. 2d 201, 207 (C. A. 2d, 1950), *aff'd on other gr'ds*, 341 U. S. 494.

The inadequacy of the indictment cannot be cured by trial, for the nature of an accused's rights under the Sixth Amendment requires that the indictment, not the evidence, inform him of the nature and cause of the accusation. *Carter* v. *United States*, *supra*; *Elder* v. *United States*, 142 F. 2d 199 (C. C. A. 9th, 1944); *Fontana* v. *United States*, 262 F. 283 (C. C. A. 8th, 1919). Refusal of the Court below to dismiss the indictment was a violation of petitioners' rights under the Sixth Amendment.

Concerning the Trial

The Treason Issue

3. The Constitution (Art. III, Sec. 3) not only specifies what acts can form the basis of a charge of treason, but also how the charge may be proved. It provides:

> "Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

This Court, in *Cramer* v. *United States,* 325 U. S. 1 (1944) at pp. 8-35 reviewed at length the various considerations which led to the adoption of this provision. Mr. Justice JACKSON pointed out the many-sided experience with accusations of treason shared by the members of the Constitutional Convention. He especially noted (p. 23) that the two-witness rule had been supported by Benjamin Franklin because "prosecutions for treason were generally virulent; and perjury too easily made use of against innocence."

And (p. 47) he quoted from Chief Justice MARSHALL (in *Ex Parte Bollman,* 4 Cranch. 75, 125, 127):

> " 'As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made, a deliberate and temperate inquiry. Whether this inquiry be directed to the fact or to the law, none can be more solemn, none more important to the citizen or to the government; none can more affect the safety of both.
>
> " '. . . It is, therefore, more safe, as well as more consonant to the principles of our constitution, that the crime of treason should not be extended by construction to doubtful cases; and that crimes not clearly within the constitutional definition, should receive such punishment as the legislature in its wisdom may provide.' "

Mr. Justice JACKSON recognized, also, that those observations remain pertinent today, for he said (at p. 48):

> ". . . Time has not made the accusation of treachery less poisonous, nor the task of judging one charged with betraying the country, including his triers, less susceptible to the influence of suspicion and rancor. The innovations made by the forefathers in the law of treason were conceived in a faith such as Paine put in the maxim that 'He that would make his own liberty

secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach himself.' "

It is true, of course, that in the *Cramer* case the Court recognized the power of Congress to make acts deemed detrimental to our safety criminal. *Cf. Ex parte Quirin*, 317 U. S. 1 (1942); *Hartzel* v. *United States*, 322 U. S. 680 (1944). But in so doing Mr. Justice JACKSON was at pains to point out that in such a case the trial would be focused on the accused's intent to commit the particular acts charged, "thus eliminating the accusation of treachery and of general intent to betray which have such passion-rousing potentialities" (p. 45).

It is essential, therefore, in order to prevent an evasion of the constitutional requirements with regard to treason that when a prosecution is conducted under a law establishing a different offense it be so conducted that there be no confusion with treason. Otherwise the "passion-rousing potentialities" of that offense would dominate the trial; the protection against perjury feared by Franklin would be absent.

We submit that the record in the case at bar is such as to require the scrutiny of this Court. We need not remind the Court of the "passion-rousing potentialities" of any prosecution for espionage which involves the disclosure of atom-bomb secrets to Soviet Russia. But the prosecutor was not content to rest on those. Not only did he in his opening stress the circumstance that petitioners were lacking in "loyalty" to this country (R. 180, 181), but he described their activities as "traitorous" and "treasonable" and concluded his opening by stating "all three of these defendants have committed the most serious crime which can be committed against the people of this country" (R. 182, 183, 184).

It has always been supposed that that was the crime of treason. And as such this trial proceeded. In his summation the prosecutor repeated his reference to "traitors", "traitorous", "betrayal" (R. 1517, 1518, 1535). And at the very end, after stressing that defendants were charged with spying on "their own" country (R. 1535) (a circumstance wholly irrelevant under the statute), he went on to characterize them as "these traitors" and said that there was "overwhelming proof of this terrible disloyalty" (R. 1535).

Even the Court was infected. In his charge, Judge KAUFMAN said "irrational sympathies must not shield proven traitors" (R. 1550). And when sentencing petitioners, he spoke of "betrayal", "traitors", "treason" and "treachery" (R. 1613, 1614, 1615). It was because of these considerations that he imposed the death sentence (R. 1616).

Yet petitioners were not charged with treason and under the Constitution could not have been — since at the time of the acts in question Russia was not an enemy but an ally (and the Court charged that this was immaterial) (R. 1553). Moreover, under the indictment here, petitioners were not even charged with intent to injure the United States — an inescapable element of the crime of treason — but only with benefiting a foreign nation. Nor could petitioners have been convicted, if so charged. For two witnesses did not prove all the overt acts — not even under the interpretation placed on the Constitution in *Haupt* v. *United States*, *supra* — and since the verdict was a general one it might have rested on overt acts not so proved. Since the prosecution and the Court poisoned the trial with the passion-arousing virus of a treason charge without according to the petitioners the protection of the "two witness" rule, the conviction was in violation of the mandate of the treason clause.

The Issue of Judicial Misconduct

4. The decision of the Court below introduces novel concepts to define the scope of judicial power to govern the conduct of a criminal cause, in a way to validate the challenged behavior of the trial judge, that had effectively deprived the petitioners of the unbiased and unfettered judgment of their peers. The rulings override the acknowledged qualifications which the Fifth and Sixth Amendments impose on the exercise of that power, and imperil the right of every accused to a fair trial by an impartial jury.

Petitioners' complaint against the conduct of the trial judge was dismissed on the ground that his "purpose" was "clarification" and that any resultant injury was, therefore, "an unavoidable incident of his unchallenged power to bring out the facts of the case." (R. 1651). Thus, the measure of a trial court's discretion to intervene in the prosecution of a criminal cause is held to be the state of mind by which he is motivated, without regard to the impact upon the jury that may be produced by the character of its outward expression. In premising its evaluation upon this subjective standard, the ruling of the Court below comes into square conflict with the established test, which considers, as the controlling factor, the objective effect of the judge's conduct upon the jury. *Bona fides* of judicial behavior cannot sanction the appearance, impression or attitude of judicial partiality, since it is this display which may sway a jury against a defendant, that is constitutionally interdicted.[11] *Ochoa* v. *United States*, 167 F. 2d 341 (C. C. A. 9th, 1948); *Gomila* v. *United States*, 146 F. 2d 372 (C. C. A. 5th, 1944); *Frantz* v. *United States*, 62 F. 2d

[11] Defense counsel's characterization of the judge's conduct as "inadvertent," suggested by the Court below to be "not compatible with the complaints now made," therefore, is neither a waiver of the defense position nor a reflection on the validity or good faith of their claim.

737 (C. C. A. 6th, 1933); *Adler* v. *United States*, 182 F. 464 (C. C. A. 5th, 1910).

By innovating this infirm criterion, the court below, in the instant case, ignored, as a matter of law, what it could not deny, and by implication, admitted, as a matter of fact (R. 1649-50). From the commencement to the termination of the proceedings, the trial judge wore the face of partisanship. He entered the fray of trial conflict, and assumed the role of an advocate. He made it apparent that he was part of the hue and cry against the petitioners.

His interpositions were ubiquitous, and *per se* a usurpation of the responsibility and function of the prosecutor. *Billeci* v. *United States*, 184 F. 2d 394 (App. D. C., 1950); *United States* v. *Earnhardt*, 153 F. 2d 472 (C. C. A. 7th, 1946); *Pasqua* v. *United States*, 146 F. 2d 522 (C. C. A. 5th, 1945), cert. den. 325 U. S. 855; *Ochoa* v. *United States*, *supra*. In the ten trial days devoted to the taking of testimony, his improper interventions numbered 210, the questions he asked totaling over 800 for that period. They were not dictated by the exigencies of beclouded presentation or the incapacity of the prosecutor to elicit the requisite evidence. Indeed, the Judge's interrogations were either superfluities in terms of developing or clarifying the issues, as they were repetitions of questions already asked and answered, and covered subjects already exhaustively treated, or outright arrogations of the role of the government attorneys to discharge the functions of prosecution. *See*: *United States* v. *Brandt*, decided May 9, 1952 (C.A. 2d) as yet unreported.

His inquisitions formed a pattern of buttressing the Government's case and of subverting the defense. By his questioning, he (1) emphasized and re-emphasized key points of the Government's case; (2) protected and rehabilitated Government witnesses; (3) commented on evidence as immaterial or dismissed contradictions brought out by defense attorneys as not very important or convincing;

(4) examined and cross-examined the defendants with hostility. Only the cumulative force of the Trial Judge's improprieties can convey an understanding of the enormity of his misconduct.[12] *See: United States* v. *Brandt, supra.* Delineation of a few representative incidents is inadequate, and, therefore, comprehensive documentation is set forth in the annexed appendix.

In totality, the judge's conduct gave the impression that he believed the petitioners were guilty and exposed him as an advocate straining to bend the jury to his will for a conviction.

The Court below holds, nonetheless, that the trial judge had the right to animadvert on the merits of the case under his right "to comment outright on any portion of the evidence" (R. 1652-53), and on this theory, validates a course of conduct that bespeaks conclusions as to the ultimate issues of guilt or innocence. This opinion confuses "the difference between assisting the jury, which is a duty of a federal judge, and encroaching upon its responsibilities, which is forbidden . . ." *Billeci* v. *United States, supra,* at p. 403.

> ". . . The accused has a right to a trial by jury. That means that his guilt or innocence must be decided by twelve laymen and not by one judge. A judge cannot impinge upon that right any more than he can destroy it. He cannot press upon the jury the weight of his influence any more than he can eliminate the jury altogether . . ." *Ibid.*

The right to comment is itself not unlimited. *See*: *Quercia* v. *United States,* 289 U. S. 466 (1933); *Virginia Ry. Co.* v. *Armentrout,* 166 F. 2d 400 (C. C. A. 4th, 1948).

The right to convey an opinion, however, where the facts

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[12] This explains why defense counsel made their motion at the end of the entire case.

are in dispute, on matters determinative of the ultimate issue, is flatly prohibited. *United States* v. *Murdock, supra; Billeci* v. *United States, supra; Sullivan* v. *United States*, 178 F. 2d 723 (App. D. C., 1949); *United States* v. *Raub*, 177 F. 2d 312 (C. A. 7th, 1949); *Virginia Ry. Co.* v. *Armentrout, supra; United States* v. *Gollin*, 166 F. 2d 123 (C. C. A. 3rd, 1947) cert. den. 333 U. S. 875. And see *United States* v. *Brandt, supra*, where the Second Circuit itself subsequently recognized the validity of this rule, the force of which it ignored in the instant case. This must necessarily be the rule since a defendant "is entitled to the benefit of the presumption of innocence by both judge and jury till his guilt is proved." *United States* v. *Brandt, supra; Adler* v. *United States, supra*, at p. 472; *Billeci* v. *United States, supra*, at p. 403. And, in no other way can a jury verdict, free of judicial influence, be secured to an accused.

The effect of the approval of the conduct of the trial judge by the Court below, is to set a precedent which empowers Federal trial judges to emasculate, if not destroy these inalienable rights of an accused at any point in the course of a trial. If judicial expression of opinion, by the device of a persistent course of prejudicial practice, such as exists here, can be comprehended under a blanket "right to comment," the floodgates are wide open to engulf the sacred right of an accused to the unrepressed mind of the jury.

The efficacy of the monitory instruction to cleanse the record of judicial misbehavior — the last refuge to which the Court below retreats — has never been held a palliative for all misconduct. *Quercia* v. *United States, supra; Billeci* v. *United States, supra; Sullivan* v. *United States, supra; Frantz* v. *United States, supra. See: Krulewitch* v. *United States*, 336 U. S. 440, 453 (1949).

While, in some instances, instructions to a jury may correct prior judicial aberrations, this is not the case. *See:*

United States v. *Brandt*, *supra*. We enter the unreliable realm of speculation to assess whether three weeks of insidious indoctrination of guilt can be counteracted by reliance on a brief, stereotyped admonition. It defies the accepted laws of psychological behavior to indulge in a presumption, that by this nostrum, a jury can free its assailed mind and restore its lost objectivity. Certainly, in a capital case, tenuous legal abstractions should yield to the facts of life.

5. The judicial anxiety to guide the minds of the jury toward a "guilty" verdict continued to express itself in erroneous instructions to the jury.

(a) The trial judge charged:

> "Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, *the enforcement of the espionage laws takes on a new significance*. Our national well being requires that we guard against spying on the secrets of our defense." (R. 1550). (Emphasis ours.)

The rights of the petitioners to their presumption of innocence and a fair and impartial trial were fixed and independent and should not have been equated in terms of the contemporaneity of the prosecution. *Starr* v. *United States*, 153 U. S. 614 (1894).

In this prosecution, where an explosive issue of the nation's security was immanent in the facts, there was no occasion to advise the jury of the special urgency of full enforcement of the espionage law. The advice constituted an invitation to a verdict based on an extraneous and incendiary factor. *See*: *Virginia Ry. Co.* v. *Armentrout*, *supra* at 406.

The full answer to the Court of Appeals' reason for rejecting the petitioners' claim of prejudice, that the ensuing general caution against convicting "innocent persons"

cured the vice (R. 1658-59), is that this prejudicial charge need not have been made at all. Moreover, even the modulating influence of this portion of the charge was immediately overridden by coupling it with the further advice that "irrational sympathies must not shield proven traitors" (R. 1550).

Yet, here, where the gravity of the offense and the volatility of the issues commanded judicial restraint, no mandate could have been given to the jury to correlate the tensions of the times with the "new significance" to enforce the espionage laws, without inviting the return of a verdict predicated, not on the evaluation of the presented evidence, but on the emotional bias of the jurors, and misguided notions of their responsibility as patriotic citizens.

(b) The trial judge, in his charge, reviewed the respective cases of the prosecution and the defense. When he arrived at the point of his resumé dealing with the contentions of the defense as to the motives of the Greenglasses in implicating the Rosenbergs, he charged:

> ". . . and that any testimony by the Greenglasses against them is due to the trouble they had with the Greenglasses while in business together, *or for some other unknown reason.*" (R. 1561) (Emphasis ours.)

This charge was false and misleading as to the other reason being "unknown," as it consigned to the limbo of obscurity an avowed and major defense position. It diverted the jury's attention from the basic strength of the attack upon the Greenglasses' credibility and the Government's fundamental weakness in its support.

The remark was made against the background of a record replete with evidence, direct and circumstantial, from which the jury could have reasonably inferred that the Greenglass testimony was dictated, in the main, by the motive of self-preservation. The distortion was neither

a slip of speech nor sired by lack of understanding. Petitioners' counsels' request to acknowledge and correct the error was met with arbitrary refusal (R. 1568).

The Court below dismissed the perversion as a mere "inaccuracy", offset by the trial judge's general admonition to examine accomplice testimony with care, and by the accurate version given in defense counsel's summation "a short time before." (R. 1661). But, in obscuring from the jury's consideration, the motive of self-interest, normally the basic infirmity of accomplice testimony, the trial judge not only failed to cure the error, but rendered the "accomplice testimony" charge a meaningless formality. The prior "accurate" arguments of counsel, in the context of their subsequently being countered by the prosecutor's summation (R. 1519), and then judicially twisted and ignored to conform with the prosecutor's summation, stood obfuscated, belittled, and emasculated of their vigor to carry weight with the jury. At any rate, since the trial judge, had in fact, and despite his disclaimer, assumed the burden of recapitulation, the Court of Appeals was without warrant to rationalize away his duty to bear the onus of a fair and accurate presentation. *Quercia* v. *United States, supra; Bollenbach* v. *United States*, 326 U. S. 607 (1946).

> "It is not sufficient that an instruction be so drawn that a jury may reach the right conclusion, but it is required that it be so framed that a jury may not draw the wrong conclusion therefrom." *Miller* v. *United States*, 120 F. 2d 968, 972 (C. C. A. 10th, 1941).

It is elementary to the concept of a fair trial, that a jury, in reaching its verdict, not be compelled to cope with a judge's misguided analysis of a cardinal issue of the case

(c) A few hours after the jury had retired for its deliberations, it requested a reading of the "testimony" of Ruth

Greenglass, starting with the first approach Julius made to her regarding espionage and terminating at the point "David came home for his furlough in 1945." (R. 1571). Defense counsel thrice requested that the equivalent cross-examination be read as properly part of the "testimony" (R. 1571, 1572, 1573).

The trial judge declined these requests because he believed that the jury had not specifically demanded a reading of the cross-examination (R. 1571, 1573). Each time, he sedulously avoided the use of the simple expedient, also requested by the defense counsel (R. 1572), that his deduction be tested by a plain question to the jury to ascertain whether they desired a reading of the cross-examination (R. 1571, 1572, 1573). In light of the adamant evasion of the trial judge to determine directly the jury's desires, the petitioners should not be constrained to be bound by the speculations of the Court below on the sense of the jury.[13] (R. 1661).

That the jury thus obtained a truncated, fractional and *ex parte* presentation of a vital part of the testimony of a key witness at a critical point in their deliberations can admit of no doubt. The cross-examination could have recalled to the mind of the jury, after a two week lapse (R. 677, 1542): (1) corroboration of the defense contention, fairly inferrable from this testimony, that David was already a spy, because of his ready knowledge of proscribed secrets, at the time he was allegedly seduced into espionage, via Ruth, by the Rosenbergs (R. 398-99, 405-12, 879-902); (2) Ruth's verbatim repetition on cross of her accounts on direct of the alleged conspiratorial occurrences during this period, as bearing on her credibility (R. 682-83, 727-28)

[13] We hesitate to burden the Court with counter-speculations except to suggest the denial of the defense request to read the cross-examination, in the presence of the jury, carried the inference to the jury that it was not entitled to make this request.

(as impeachable by reason of coaching as by inconsistency); and (3) relevant reflections on her emotions and state of mind, contradictory to her actions, as evidence of her testimonial unreliability.

The elimination of this part of the testimony from the attention of the jury, deprived the petitioners of a proper consideration of their defense.

The General Issue of Prejudicial Error

6. The savage sentence of death on the petitioners, unprecedented in the annals of American jurisprudence, is a relevant reflection of judicial prejudice. *United States* v. *Hoffman*, 137 F. 2d 416 (C. C. A. 2d, 1943). The sentence was merely an unabashed expression of the animus which governed his conduct during the trial, and was dramatic confirmation, if any is necessary, of the trial court's hostility to the defendants. In combination with the imbalancing force exerted by the climate in which this case was tried, and the intrinsic emotional pulls of its issues, the impact of the judge's conduct was devastating and contributed to the downfall of the defendants.

In the context of a conspiracy trial, where the issues were sharply contested, where the prosecution was founded on accomplice testimony and circumstantial evidence, and where the record, as we shall hereafter show, was saturated with improperly admitted, inflammatory and prejudicial matter, each individual error of the trial court, alone and agglomerately, "provided the . . . impetus which swung the scales toward guilt." *Glasser* v. *United States*, 315 U. S. 60, 67 (1942). Under such circumstances the decisions of this Court command the overthrow of the conviction below. *Krulewitch* v. *United States, supra; Kotteakos* v. *United States*, 328 U. S. 750 (1946); *Bihn* v. *United States*, 328 U. S. 633 (1946); *Glasser* v. *United States, supra; Berger* v. *United States, supra.* American justice cannot permit the

forfeiture of lives, where the assertion of innocence is so oppressed with unfair advantage.

The Issue of "Communist" Evidence.

7. The Court below rules that independent "evidence . . . to the effect (1) that the defendants expressed a preference for the Russian social and economic organization over ours, and (2) that they were members of the Communist Party . . . possessed relevance . . . (as bearing) on a possible motive for his spying, or on a possible intent to do so . . ." (R. 1654-55).[14] It concedes that petitioners attack the admissibility of this evidence on the ground of *competence*, not relevance (R. 1654). Indeed, in the absence of consideration of the question of competence, the Court's finding of "relevance" is unavailing, as a matter of law, and brings its decision into probable conflict with this court's rulings in *Haupt* v. *United States*, *supra*; *Schneiderman* v. *United States*, *supra*; and *Michelson* v. *United States*, *supra*.

Expressions of "preference" for a "social and economic" form of "organization" denote no more than an academic leaning to a social or political theory, or, at most, the taking of sides in the great debate over economic and political systems that has been raging for a century. Nothing in the proof indicates, as the Court's formulation of the facts acknowledges, that this "preference" had hardened into a devotion to a foreign government or country, imported any obligation to that nation, or dictated a transfer of allegiance to, or division of allegiance between that government and the United States.

"Explicit" statements carrying contrary connotations were admitted in *Haupt* v. *United States*, *supra*, and in

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[14] While the Court of Appeals refers here, in the alternative, to "motive" or "intent", it is not amiss to reiterate that the trial judge submitted the evidence to the jury solely on the issue of intent. (R. 1558). *Cf. Bollenbach* v. *United States*, *supra*.

United States v. *Molzahn*, 135 F. 2d 92 (C. C. A. 2d, 1943) cert. den. 319 U. S. 774.[15] In the *Haupt* case, however, this Court declared a ban against admission of the character of testimony introduced here.

> "Such testimony is to be scrutinized with care to be certain the statements are not expressions of mere lawful and permissible differences of opinion with our own government or quite proper appreciation of the land of birth." (at p. 642).

The extent to which the admission of this evidence trespassed upon fields of permissible expression is exposed by the efforts of the Government, "logically" extending the theory of the "relevance" of "leftist" ideas, to transmute into evidence of criminality the petitioners' opinions and activities concerning: Russia's carrying the brunt of the war in 1944 (R. 1174); opening a second front in Europe (R. 1174); collection of money for the Joint Anti-Fascist Refugee Committee (R. 1177); membership in the International Workers Order, an insurance fund (R. 1178-81). *Cf. United States* v. *Remington*, 191 F. 2d 246 (C. A. 2d, 1951), 342 U. S. 895; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123 (1951); and the signing of a petition by Ethel Rosenberg for the nomination of a Communist Party candidate for the City Council of the City of New York (R. 1346-47).

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[15] In *Haupt* v. *United States*, *supra*, the evidence was deemed admissible because, in addition to showing the defendant's sympathy with Germany and Hitler, declarations of the defendant indicated that he had helped Germany by sending it money; that he had acted because he was "helping the fatherland;" that he would never let his son be drafted into the American Army, but would arrange for his enlistment in the German Air Force, and that, if he were ever drafted into the American Army "he would crawl over to the enemy lines and tell them our position." *United States* v. *Haupt*, 152 F. 2d. 771, 791-2 (C.C.A. 7th, 1945). In *United States* v. *Molzahn*, *supra*, added to the defendant's political sympathies, were his membership and activity in the German Nazi Party and his explicit expression of a "divided loyalty" between the United States and Germany.

The implications of the admissibility of such evidence are portentous. If permissible expressions of belief can be admissible as material evidence in criminal prosecutions for high crimes, the attendant risk of free expression will stifle the exercise of the right.

Membership in the Communist Party, *per se*, is ruled by the Court below to be evidence that a member subscribes to the alleged tenets of the Party, among them the obligation to "go along" with orders to the Party from the Soviet Union to "propagandize, spy and sabotage . . ." on behalf of the Soviet Union (R. 1655).

This Court has held:

> ". . . that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." *Schneiderman* v. *United States, supra* at 136.

Proof of any matter which must be drawn from "mere" political "association" was therefore held constitutionally inhibited.

It was improper, therefore, to admit proof "to the effect . . . that they were members of the Communist Party," (R. 1654), for evidentiary conclusions to be drawn from its tenets, without proof, which the prosecution did not even assume to elicit, that the Rosenbergs personally accepted the alleged tenets of the Communist Party relevant here, or even knew of them. *Knauer* v. *United States*, 328 U. S. 654, 669 (1946); *Bridges* v. *Wixon*, 326 U. S. 135 (1945); *Schneiderman* v. *United States, supra.*

This failure of proof makes irrelevant the state of the record concerning the two minor premises of the Government's evidentiary syllogism: Party membership of the Rosenbergs, and the existence of Party policy or the enforcement of a discipline on its members to commit espionage for the Soviet Union. It should be noted, nevertheless,

that no *prima facie* proof of membership was educed (R. 240-43, 250-53, 258, 423-24, 679, 1161-64, 1171, 1175, 1178-81, 1183, 1239, 1277, 1302-5, 1309, 1353, 1346-47, 1371), nor does careful analysis of the testimony of the voluble and willing witness Bentley reveal that it forged the "missing link" between membership in the Communist Party and the requisite statutory intent, which was its purport (R. 965-82, 998, 1013-14).

Even if, arguendo, it be assumed that evidence of mere membership in the Communist Party could be a competent base for inferences bearing on motive or intent, upon a showing "that the Communist Party was tied to Soviet causes" (R. 1655), the trial judge committed highly prejudicial error in submitting to the notice and decision of the jury the question as to whether this connection was established. This question was, again, a question of competence, for the judge to decide. *United States* v. *Dennis*, 183 F. 2d 201, 231 (C. A. 2d, 1950), *aff'd* 341 U. S. 494; *United States* v. *Brand*, 79 F. 2d 605 (C. C. A. 2d, 1935); *United States* v. *Cotter*, 60 F. 2d 689 (C. C. A. 2d, 1932). In consequence, the Government was not only permitted, but invited, to qualify as an expert, and smear the record with, the "expert testimony" of the notorious and infamous Elizabeth Bentley, to supply the connection. The effect was to exact from the petitioners the impossible choice between allowing Bentley and her far-flung tale to go unchallenged, or to convert the trial into a trial of Bentley and a defense of the Communist Party. The wisdom of their election to forego a contest of these collateral issues is not pertinent, since the hazard of substantial prejudice inhered in either alternative.

Even the theory upon which the Court of Appeals holds this evidence admissible contravenes well-settled authority, including the decision of this Court in *Michelson* v. *United States*, *supra*. The only probative value of this evidence,

according to the Court below, was that it furnished a basis for the inference that persons holding the political views attributed to the petitioners or being associated in the Communist Party were "more likely to spy for [the Soviet Union] than other Americans." (R. 1654-55). But evidence which is relevant only to "likelihood," propensity or disposition, despite the possible logical "bearing" on the question of intent, characteristic of all "disposition" proof, is, as a matter of policy, rejected. *Michelson* v. *United States*, *supra*; *Smith* v. *United States*, 173 F. 2d 181 (C. A. 9th, 1949); *Lovely* v. *United States*, 169 F. 2d 386 (C. A. 4th, 1948); *Railton* v. *United States*, 127 F. 2d 691 (C. C. A. 5th, 1942); I Wigmore, *On Evidence* (3rd ed. 1940) Sec. 57; *see:* Stone, *Exclusion of Similar Fact Evidence*, 51 Harv. L. Rev. 988 (1938). This policy is founded on a recognition that a communally disdained "disposition" will tend to weigh too much with the jury, and, by providing an extraneous ethical justification for guilt, deny a defendant a fair opportunity to defend a particular charge.

The breach of this rule permitted constant insinuation of the alleged "communist" attachments of the petitioners to permeate the case. In the context of a half-decade of fervent anti-communism, the petitioners may well have been convicted, to paraphrase Professor Wigmore: "not because they were guilty of this crime, but because they were Communists and may as well be condemned . . ." *See:* I Wigmore, *op. cit. supra* at p. 456. Any gap or inadequacy in the proof of the substantive crime may well have been filled by the conjunction of the petitioners' "communism" with the extant popular political fixation that domestic communists merit a suspicion of infidelity to their native land.

Even if some relevance, other than propensity, can be conjured up—and even to the Court below the "relevance" rises only to the level of a "possible bearing"—proper discretion cautions to the exclusion of this evidence, which

cradles the potential of misunderstanding and misuse by the jury. *Brinegar* v. *United States*, 338 U. S. 160, 173 (1949). The risk of nurturing such prejudice in this case was uncalled for. The proof here was not of acts innocent on their face or susceptible of ambiguous construction in terms of the intent. Nor did the defense, consisting of denials of the acts, "confess and avoid" in relation to intent. If the prosecution's evidence was to be believed, the acts *per se* proved the intent "to advantage" charged in the indictment. *Compare: Cramer* v. *United States, supra.* If the prosecution's case was to be believed, the intent would appear to be conclusive beyond all doubt, and the injection of "communist" evidence, at best, cumulative, and, therefore, as a matter of policy to be excluded because "subject only to misuse by complicating the issues and poisoning the minds of the jurors." *Smith* v. *United States, supra*, at p. 185.

The Court below recognized that "such evidence can be highly inflammatory in a jury trial," and doubted whether the trial judge's caution "not to determine guilt or innocence of a defendant on whether or not he is a communist" was no more "than an empty ritual without any practical effect." (R. 1655-56). Strangely, however, instead of exercising its appellate power to secure the petitioners a trial rid of prejudice, it suggests their only remedy to be waiver of their constitutional right to a jury trial in favor of trial "by a judge alone." (R. 1656). It is startling and novel to be told that an accused must abandon his guarantee to a jury trial to secure a fair trial. It would be supererogation to suggest that this Court, when faced with prejudicial error, has followed a far different course.

The omnipresence before the jury of the inflammatory "communist" evidence, having the reasonable tendency to blunt objectivity and juvenate the political prejudices and

passions of our time, heavily weighted the scales for conviction, to the petitioners' substantial prejudice.

The Issue of the "Julius" Telephone Calls.

8. Elizabeth Bentley, a self-characterized spy, testified to her participation in a conspiracy with one Jacob Golos, alleged by her to have been a Soviet agent, between 1938 and the time of his death on November 25, 1943, to secure information from persons in the employ of the United States Government "for transmission to Moscow" (R. 973-78).

Testimony that she had received telephone calls from a "Julius," as "go-between" for Golos and this "Julius" (R. 993-96), was held proper by the Court below, over petitioners' objection that an insufficient foundation had been laid for its introduction, and without consideration of their principal contention that the inference to be drawn of a connection between Julius Rosenberg and the alleged Golos-Bentley conspiracy, had no legitimate evidentiary end. See Appellant-Rosenberg's brief in Court of Appeals 124-26.

The Court below showed itself willing, in the absence of voice identification by the witness (R. 1656-58), to accept a circumstantial base, which did no more than establish the possibility that, during an unspecified interval, the petitioner Julius Rosenberg and Bentley may have known of each other (R. 529), and, at an unspecified time, may have spoken to each other once, on the telephone (R. 261), as sufficient assurance of the likelihood that several specific telephone calls were received by the witness, during a specific period (R. 993-96).[16] The well-settled authorities

[16] "Five," "six," or "eight" calls were allegedly received by Bentley between the fall of 1942 and almost until November, 1943. (R. 1003-04). The so-called foundation relied on was as follows: (1) The antiphonal speaker's self-identification by the name "Julius," asserted in the Government Brief in the Court of Appeals, at pp. 61-64, although not at the trial,

demand that the circumstantial substitute for voice identification pinpoint the specific telephone conversation to be authenticated as to time and place of making and/or receipt, and assure, by independent proof of contemporaneous relations between the parties, that they were the antiphonal speakers. *Jarvis* v. *United States*, 90 F. 2d 243 (C. C. A. 1st, 1937) cert. den. 302 U. S. 705; *Fabacher* v. *United States*, 84 F. 2d 602 (C. C. A. 5th, 1936); *Andrews* v. *United States*, 78 F. 2d 274 (C. C. A. 10th, 1935); *Lewis* v. *United States*, 295 F. 441 (C. C. A. 1st, 1924) cert. den. 265 U. S. 594; *DeWitt* v. *United States*, 291 F. 995 (C. C. A. 6th, 1923), cert. den. 263 U. S. 714; *Robilio* v. *United States*, 291 F. 975 (C. C. A. 6th, 1923) cert. den. 263 U. S. 716; *Wallace* v. *United States*, 291 F. 972 (C. C. A. 6th, 1923); *Pope* v. *United States*, 289 F. 312 (C. C. A. 3rd, 1923) cert. den. 267 U. S. 703.

Acceptance of the evidentiary base, proved here, assured nothing but that the lay minds of the jury would fasten on the identity of the name of the caller, "Julius," established by his self-identification, with the given name of the petitioner, Julius Rosenberg, to reach the legally unwarranted conclusion that the caller was the petitioner. *Wallace* v. *United States, supra; Robilio* v. *United States, supra; Pope* v. *United States, supra.*

What evidentiary purpose the establishment of the pre-

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to be supported by accomplice evidence that Rosenberg used the name of "Julius" in espionage work. This, of course, was contradicted by their expert testimony that code names, not actual names, were employed by espionage agents (R. 815, 826, 985); (2) A conversation testified to by Elicher between himself and Sobell in which Sobell reported to Elitcher that ". . . Rosenberg had told him [Sobell] that he had *once* talked to Elizabeth Bentley on the phone but that he was pretty sure she didn't know who he was . . ." (R. 261). (Emphasis ours.) Even this *single* call, allegedly a base for *several*, was not fixed in time to coincide with the period set by Bentley. Bentley testified she *received* calls, but the so-called foundation does not indicate that her alleged antiphonal speaker *made* the call.

indictment Rosenberg-Golos-Bentley connection was designed to serve, was a mystery in the trial court since the judge, at no time, instructed the jury on this phase of the case. The omission of the Court of Appeals to consider the question at all perpetuates the enigma. By the process of deduction, it is possible, if not to determine the mind of either of the lower courts, at least to reconstruct the variety of possible probative purposes conjured up by the Government to support its admission.

Apparently the prosecution believed that the Rosenberg-Golos-Bentley connection, considered by it to be illicit and in the nature of a conspiracy to commit espionage, was admissible in two ways to prove the crime in chief.

On the trial, the prosecutor indicated the proof was being educed "for the jury to judge whether Julius Rosenberg was one of his [Golos'] contacts" (R. 988) "under the authority of the Dennis case" (R. 990, 988). *United States* v. *Dennis*, 183 F. 2d 201, 231 2 (C. A. 2d, 1950) *aff'd* 341 U. S. 494, stands for no more than that pre indictment declarations (or acts) of conspirators are permitted only insofar as they reveal the early genesis of the conspiracy being tried as tending to prove their involvment in that conspiracy. *See also: Heike* v. *United States*, 227 U. S. 131 (1913); *Scerba* v. *United States*, 61 F. 2d 1009 (C. C. A. 2d, 1932). It did not work a suspension of the fundamental rule that guilt of another offense cannot be proven to show guilt of the offense charged. *Michelson* v. *United States*, *supra*; *Smith* v. *United States*, *supra*; *Lovely* v. *United States*, *supra*; *Railton* v. *United States*, *supra*. And since the government did not prove, assume to prove, or, even in its usual manner, insinuate that it believed, the instant conspiracy had its origin in the Golos Bentley group, it has not brought itself within the rule of the *Dennis* case, but wakens the exclusionary precepts of the *Michelson* case and its scions.

In its brief on appeal in the Court below, the Government relinquished this patently infirm argument, in favor of the newly created suggestion that this evidence was probative of the crime charged because it tended to corroborate the government witness, Elitcher (at p. 64). Elitcher's testimony, thus "corroborated," was his relation of the incident in which Sobell told him that Rosenberg had told Sobell that Rosenberg ". . . once talked to Elizabeth Bentley on the phone . . ." (R. 261). But this second hand admission was the acknowledged circumstantial foundation which supported the admissibility of the "Julius" phone conversation (R. 992) to support the inference of a Rosenberg-Golos-Bentley connection. To permit the Government to use the admission to establish the competency of the phone calls, and then to use the phone calls to corroborate the admission is a ludicrous example of pulling oneself up by one's own bootstraps.[13]

The Government was thus constrained to fall back on a third and fourth alternative, which are equally unavailing. It asserts that: "At most, the evidence showed that in 1942 and 1943 Rosenberg associated with persons who were engaged in Soviet espionage . . ." [Gov't Brief in Court of Appeals, p. 65] as though this were not precisely the proof that the law forbids. *Michelson* v. *United States*, *supra*; 1 Wigmore, *On Evidence*, *op. cit.*, *supra*. If the Government added, it went further, as the petitioners contend it tends to do, and proves a separate offense, it is, nevertheless admissible as a similar act bearing on the intent to commit the crime charged (*Id.* at p. 65). But the bald assertion of "similarity" or speculation as to "simi-

[13] The same contention is made in relation to David's testimony that Julius had told him that ". . . probably Bentley knew him" (R. 529), namely urged at the trial (R. 992-93), and subsequently hotly pressed in the Court of Appeals as a base for admission of the "Julius" calls. See: Gov't brief in the Court of Appeals, p. 64. Obviously, the same answer applies.

larity" from a record that builds no foundation for the inference of "similarity" is inadequate to establish the competence of an act as being so "similar" as to render it admissible as probative of intent. "Similarity" must be proved.[18] *Cf. People* v. *Molineux*, 168 N. Y. 264 (1901); II Wigmore, *On Evidence, supra*, Sec. 302.

Here, there was no such proof. The record reveals neither an identity of personnel, purpose, nor of intent between the alleged Golos-Bentley plot and the crime charged. Nowhere does it appear that the former sought or transmitted "secret" information "relating to the national defense." Its solicitation from United States government employees is no proof of these essential facts. See: *Borum* v. *United States*, 56 F. 2d 301 (App. D. C. 1932); *Crowley* v. *United States*, 8 F. 2d 118 (C. C. A. 9th, 1925). Nor is there any evidence to show that the intent to confer a military advantage on the Soviet Union, requisite here, was the state of mind which moved the Golos-Bentley group. In fact, since the Government cannot point to any "act" which Rosenberg allegedly performed in the Golos-Bentley conspiracy, the proof fails both as to "similarity" and "act." In sum, it is, again, the prohibited evidence of propensity to associate with "spies" to prove the likelihood or disposition of the petitioners having committed the crime charged.

The circumlocutions of the government to rationalize the admission of the evidence, show less heed for the propriety or purpose of its admission, than that a sinister connection between Bentley and Rosenberg appear. That the notorious Bentley was permitted to infer that a link, however tenuous, existed between herself and Rosenberg, was sufficient to brand him with the mark of "spy" which she had

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[18] The same vice inheres in the ruling of the Court of Appeals in relation to the evidence concerning the "theft" of a "proximity fuse" by Julius Rosenberg (R. 1659).

flaunted for the preceding five years (R. 995). Thus indelibly stigmatized, his defense to the charges for which he was being tried, became a study in futility.

The Issue of the "Schneider" Testimony.

9. Section 3432 of Title 18 of the United States Code imposes upon the prosecution in a capital case the mandatory duty to supply the defendant "at least three days before commencement of trial . . . with . . . a list of the witnesses to be produced at the trial for proving the indictment." *Logan* v. *United States*, 144 U. S. 263 (1892); *McNabb* v. *United States*, 123 F. 2d 848 (C. C. A. 6th, 1941), *rev'd on other gr'ds*, 318 U. S. 332; *Horton* v. *United States*, 15 App. D. C. 310 (1899). The obligation is enforceable by the exclusion of the testimony of a witness called in violation of the prescription of the statute. VI Wigmore, *On Evidence* (3rd Ed. 1940) Sec. 1854.

The Government called to the stand as its last witness one Ben Schneider (R. 1424), whose name had not appeared on the list of witnesses furnished to the petitioners prior to the inception of the trial (R. 51-52, 1424-25).

The Court below sanctions the ruling of the trial judge permitting the testimony, over appropriate objections (R. 1424-26), on the basis that the witness was offered in rebuttal, and had been theretofore unknown to the authorities (R. 1661-63). This ruling is probably in conflict with *Goldsby* v. *United States*, *supra*, and *Logan* v. *United States*, *supra*.

Goldsby held the operation of the statute did not "extend to such witnesses as may be rendered necessary for rebuttable purposes resulting from the testimony of the accused in his defense." In context, the reference was to the "alibi" evidence of the defendant.

The pronouncement was read to justify a suspension of the demand of the statute only in situations involving the introduction of new matter arising on a defendant's case,

as was made clear by the *Logan* formulation "by reason of unexpected developments at the trial." *Logan* v. *United States, supra,* at p. 306.

The Schneider testimony was introduced to prove the petitioners' intention of and preparation for "flight", an issue which in theory is, and in fact, was made an integral element of the Government's case.[19] The defense was confined to the denials of the petitioners as to any such intention or preparation (R. 1142-43, 1278-81, 1361-64).

It is extremely doubtful if the Schneider testimony was proper rebuttal at all. But, even assuming its propriety, solely because of the wide discretion vested in a Federal trial court to control the order of proof, it was not such rebuttal as would toll the application of the statute, since the denials here were neither new matter nor created "unexpected developments at the trial," within the purview of the *Goldsby* or *Logan* decisions.

The contrary interpretation, that the names of all rebuttal witnesses can be withheld from the defense, nullifies the protections of an accused which the statute was designed to establish "as a shield for the defense" and provides to sharp prosecutors the impetus and device to frustrate the main purpose of the legislation.

Similarly, the record is bare of any evidence that the Schneider testimony might have been admitted under the exception of a witness "afterward coming to the knowledge of the Government." *Logan* v. *United States, supra,* p. 306. The *voire dire* examination elicited merely that this witness saw F. B. I. agents, and the United States Attorney "as a lawyer" for the first time "yesterday" (R. 1425). No proof was forthcoming that either the F. B. I. or the United States Attorney lacked knowledge of the

[19] David Greenglass testified that in May, 1950, Julius Rosenberg, while advising him to flee the country, indicated that the Rosenbergs, as well, planned flight (R. 529, 713).

witness prior to "yesterday", or that, with reasonable diligence, they could not have known about him. *Cf. United States.* v. *Bayer,* 331 U. S. 532 (1947); *Zurich* v. *Wehr,* 163 F. 2d 791 (C. C. A. 3rd, 1947); *Washer* v. *United States,* 12 F. 2d 925 (C. C. A. 5th, 1926), cert. den. 273 U. S. 705.

It is unthinkable that the authorities, in a case of this importance, for over a year armed with and obviously relying upon David Greenglass' story about the Rosenbergs' planned flight for themselves (R. 529, 713), should not have carefully investigated the subject of passport photos, which appeared to be an integral part of the scheme of flight.[20]

The prosecutor seemed to be concerned with the production of a "surprise" witness on a sensitive issue and to send the case to the jury with a dramatic finish. The lack of notice concerning the identity of Schneider as a witness limited the defense and cramped an investigation that may have demolished the testimony, exposed as glaringly suspect even by the necessarily improvised cross-examination (R. 1429-40).

The injury here underlines the need for the exercise of this Court's power to compel strict enforcement of the law in the interest of the sound administration of criminal justice. General considerations of public policy forbid the prosecution to reap "the fruits of wrongdoing" by its officers [*United States* v. *Mitchell,* 322 U. S. 65, 70 (1944)] and are compelling for a review to cure the substantial prejudice suffered by these petitioners.

Concerning the Sentence

10. The Court below, by virtue of its misconception of the petitioners' contentions relating to the sentence of death

[20] Indeed, the record is even bare of an assertion or representation as to the facts. When defense counsel indicated his willingness to take the prosecutor's word on the subject, the prosecutor disdained a reply (R. 1425). The refusal is susceptible of many inferences, including that his word could not truthfully have been passed.

imposed upon them, failed to reach the constitutional argument upon which they rely. The petitioners neither urged the invalidity of the sentence as "an abuse of discretion", nor pressed for the relief of its "reduction". They assert the unconstitutionality of the sentence, as in violation of the Eighth Amendment, and ask for reversal of the judgment imposing it.

The Eighth Amendment, by its terms, prohibits the infliction of "cruel and unusual punishments". It was conceived, along with the other protections of the Bill of Rights, as a stricture against tyrannical encroachment upon the democratic rights of the people. 2 Story, *Commentaries on the Constitution* (5th Ed., 1891) Sec. 1903; Whalen, *Punishment for Crime: The Supreme Court and the Constitution*, 35 Minn. L. Rev. 109, 111 (1951); 3 *Elliott's Debates* 447, 448. Its initial purport may have been adumbrated by the long course of its usual employment as a protection against inhuman, barbarous or torturous punishment, or the "wanton infliction of pain". *See: Louisiana* v. *Resweber*, 329 U. S. 459 (1947). Yet the force of its original conception has not been lost to this Court. In *Weems* v. *United States*, 217 U. S. 349, 372-3 (1910), it stated:

> ". . . surely they [authors of the Amendment] intended more than to register fear of the forms of abuse that went out of practice with the Stuarts. Surely, their jealousy of power had a saner justification than that. They were men of action, practical and sagacious, not beset by vain imagining and it must have come to them that there could be exercises of cruelty by laws other than those which inflicted bodily pain or mutilation. With power in a legislature great, if not unlimited to give criminal character to the actions of men, with power unlimited to fix terms of imprisonment with what accompaniments they might, what more potent instruments of cruelty could be put into the hands of power? And it was believed that power

might be tempted to cruelty. This was the motive of the clause and if we are to attribute an intelligent providence to its advocates we cannot think that it was intended to prohibit only practices like the Stuarts, or to prevent only an exact repetition of history. We cannot think that the possibility of a coercive cruelty being exercised through other forms of punishment was overlooked. We say 'coercive cruelty,' because there was more to be considered than ordinary criminal laws. Cruelty might become an instrument of tyranny; of zeal for a purpose either honest or sinister."

In its most profound import, therefore, the Amendment's prohibitions are recognized to fall upon punishment whose imposition is designed to, or which tends to enforce, or which has the effect of enforcing, political conformity to the concepts of the sovereign. The kind, character and degree of punishment must be measured, case by case, against the yardstick of its power to bring about this illegitimate end. See: *Weems* v. *United States, supra; United States* v. *Ragen*, 54 F. S. 973 (D. C. N. D. Ill. E. D. 1944), *aff'd* 146 F. 2d 349, cert. den. 325 U. S. 865. The instant case, for the first time since the adoption of the Constitution, calls for such a determination by this Court.

The obligation of the trial court was to fix a sentence upon two persons who had been convicted of a specific charge with a view to the "dominant objective of the criminal law . . . reformation and rehabilitation of offenders." *See:* R. 1673; *Williams* v. *New York*, 337 U. S. 241, 248 (1949). The factors which it ignored as well as those to which it accorded significance, in shouldering its burden, evidenced that the deterrent efficacy of its sentence was directed at something other than the vindication of the breach of law ascribed to these petitioners.

The record makes it clear that the theory of the trial judge's sentence was to constitute it a warning against a breach of the Government's political ethic on the sharpest

international and domestic political issues of the present period.

On the issue of political controversy, which inhered in the prosecution of the crime charged, the Government and the defendants were placed at opposite poles. The Government's case assumed not only the burden of the legitimate enforcement of the military security of the atom-bomb, but, as well, the authoritative advocacy of the established Government policy of atomic monopoly, which from the instant of the bomb's detonation at Hiroshima, had, nonetheless, been the subject of popular discussion in both international tribunals and public fora. The prosecution was postulated upon the assumption of the propriety of the diplomatic use of atomic armament in a global power-struggle with the Soviet Union and its Socialist neighbors as acknowledged enemies. It fostered, as a by-product of this conflict, the determined antipathy to tolerance of concepts which encompass the necessity or desirability of mitigating international dissension, eliminating the atom-bomb from the arsenal of morally permissible weapons, embracing theories or favorable estimates of the accomplishments of socialism or communism. While, perhaps, few voices, today are raised in acceptance of these theses, that the adoption of contrary Government policy should foreclose their discussion to the people, is inadmissible.

In his remarks on sentence, the trial judge assessed the gravity of the offense in these terms. He stressed that "the possession of the missile certainly does play a very important part in power politics" (R. 1610); repudiated "delusions about the benignity of Soviet power" (R. 1613); castigated these petitioners for allegedly "making the choice of devoting themselves to the Russian ideology instead of serving the cause of liberty and freedom" (R. 1614), and advanced the frenetic charge that their "be-

trayal" had "undoubtedly . . . altered the course of history to the disadvantage of our country." (R. 1615).

The dictum of the concurring opinion in the Court below, justifying the trial judge on the authority of *Williams* v. *New York, supra,* to consider these extra-judicial factors (R. 1681) is unwarranted. The considerations that move a sentencing judge must have a rational foundation, relevant to the particular crime and criminal. The criteria adopted in this case were egregiously inappropriate in the context of the crime of which these petitioners were convicted.

The gravamen of the crime was the transmittal of atomic information to the Soviet Union, in the period of World War II when that nation's alliance with ours against a common enemy raised no question of its "benignity" and when the atom bomb cast no shadow as a force in the power politics of that nation or ours. Only the ignorant or wilfully blind would urge that this crime, if disposed of at the time it was laid, would have incurred a harsh or vindictive sentence. The measure of the severity of punishment on the gauge of extant political circumstances, non-existent at the time of the alleged commission of the crime, exacted retribution for a crime other than that with which the petitioners were charged. The vindication of the sentences on the ground of the continuance of the conspiracy into the "cold war" period is a mere rationalization of the trial judge's position. Were this the criterion, it would have been reasonable to expect a sentence other than death for Ethel Rosenberg as to whom the record is bare of post-war involvement.

By the imposition upon these petitioners of the unreasonable burden of foreseeing the revised relations between the Soviet Union and the United States, the trial judge freed himself to impute to them an intent, with which they were not charged, to injure the United States, and to fasten

upon them the onus for the subsequent and unexpected turn of history. The forced finding that the petitioners had an intent to injure the United States changed the quality and gravity of the offense. Congress, in passing the Atomic Energy Act of 1946, 42 U. S. C. 1816, for instance, did not see fit to prescribe the death penalty for espionage except where there exists an intent to injure the United States.

The departure from the record to valuate the heinousness of the criminality of the petitioners evidences a design to "serve the maximum interest" in preserving inviolate the Government's political policy. The conviction of the Court that: "It is so difficult to make people realize that this country is engaged in a life and death struggle with a completely different system" (R. 1613) reflects its determination to impress upon the minds of the people, by means of the sentence, the urgency of political compliance.

The sentence of death imposed on the petitioners is unique in American history. No civil court has ever imposed this penalty in an espionage case, and only twice has it been levied by such a court in treason cases, and then never executed (R. 1671). Even in the special context of atomic espionage on behalf of the Soviet Union, only prison sentences were meted out both here and abroad.[21]

This Court has recognized that: "This whole country has traveled far from the period in which the death sentence was an automatic and commonplace result of convictions—even for offenses today deemed trivial." *Williams* v. *New York*, *supra*, at 248. It has developed, as a sociological fact, into the maximum warning against societally intoler-

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[21] Dr. Klaus Fuchs, in England: 14 years; Allan Nunn May, in Canada: 10 years; (*See: Report on Soviet Atomic Espionage*, *supra*); Harry Gold, here: 30 years (R. 801); and David Greenglass, here: 15 years (R. 1638). Ruth, his wife, was never prosecuted and is presently a free woman (R. 593, 740).

able conduct. Its "coercive" power is, therefore, not to be gainsaid.

Its use in this case, distinguishing it from all others of its kind, exerted its "coercive cruelty" to emphasize that divergence from the Government's political position is not to be indulged, and is clearly offensive to the fundamental proscriptions of the Eighth Amendment. This is certainly the kind of "extraordinary" situation in which the courts have generally conceded their power to act to invalidate the imposition of a penalty which violates the Eighth Amendment, within the terms of a penalty provision on its face valid. *See: Dryden* v. *United States*, 139 F. 2d 487 (C. C. A. 8th, 1944); *Welch* v. *Hudspeth*, 132 F. 2d 434 (C. C. A. 10th, 1942); *United States* v. *Sorcey*, 151 F. 2d 899 (C. C. A. 7th, 1945) cert. den. 327 U. S. 794; *Bailey* v. *United States*, 74 F. 2d 451 (C. C. A. 10th, 1934); *Sansone* v. *Zerbst*, 73 F. 2d 670 (C. C. A. 10th, 1934); *Moore* v. *Aderhold*, 108 F. 2d 729 (C. C. A. 10th, 1939); *Kramer* v. *United States*, 147 F. 2d 756 (C. C. A. 6th, 1945); cert. den. 324 U. S. 878; *Rose* v. *United States*, 128 F. 2d 622 (C. C. A. 10th, 1942), cert. den. 317 U. S. 651; *Reavis* v. *United States*, 106 F. 2d 982 (C. C. A. 10th, 1939); *Martin* v. *United States*, 99 F. 2d 236 (C. C. A. 10th, 1938); *Martin* v. *United States*, 100 F. 2d 490 (C. C. A. 10th, 1938), cert. den. 306 U. S. 649.

Conclusion

The writ of certiorari should be granted, and the judgment below should be reversed with the direction that the indictment be dismissed or, in the alternative, that a new trial be granted.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG,
Petitioners,

vs.

THE UNITED STATES OF AMERICA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

EMANUEL H. BLOCH,
Attorney for Petitioners.

APPENDIX

Documentation of Judicial Misconduct

A. Emphases and Reemphases of Key Points of Government's Case

Although the subject had been exhausted, the trial judge retraced the incident of Julius' request to Elitcher to turn over blueprints as an aid to Russia, with the promise of cautionary measures. He caused a review of Julius' statement to Elitcher that others were giving military information to the Soviet Union (R. 236) and belabored the point (R. 236-37). He accented Sobell's overture to Elitcher for "military secrets" (R. 246). He stressed the date when Elitcher visited Julius in New York City to discuss espionage (R. 251) and led Elitcher to reiterate that Julius, in 1946 or 1947, advised against any further communication because of some leak in the espionage apparatus (R. 253) and that Julius, Sobell and Elitcher met in New York City in June, 1948, to dissuade Elitcher from leaving his Government post (R. 256). He focused attention to film equipment in Sobell's home on the night in July, 1948, when Elitcher, arriving in New York from Washington, D. C., that evening, immediately accompanied Sobell on his hurried trip to Julius to dispose of material (R. 262); he harped repeatedly on the purpose of this night visit to impute an equivocal evidence, the transfer of contraband from Sobell to Julius (R. 363-64). Again and again, he reverted to the link between Julius and Sobell to recruit Elitcher for espionage (R. 352, 357-58) and compounded the offense by suggestive questions (R. 317-18) with dogged pertinacity (R. 352, 357-58).

* * * * * * *

To surmount any inference that Elitcher was under fear or duress when he gave his first statement to F. B. I. agents after a few days of questioning, a fact which Elitcher admitted later on in his cross-examination (R. 281-83, 367), the trial court, following the negative answer of the witness to the prosecutor's question whether the F. B. I. agents

had used force, coercion, threats or loud and shouting language (R. 383), injected the redundant query "would you say the agents at all times behaved themselves like gentlemen?"

Central episodes in the Government's case were embraced by the trial judge for re-examination, re-illumination, and re-emphasis, to buttress the tales of David, e. g.: the incident of January, 1945, concerning the cutting of the Jello-box and the arrangements for a meeting with an espionage courier (R. 449-50); Gold's visit to the Greenglasses at Albuquerque (R. 456); the "schematic" view of the lens mold set up in experiment turned over by David to Gold (R. 462) and again (R. 466); David's September, 1945 furlough period when Julius came around for atom-bomb information (R. 490); the admission of Julius to David that he stole a proximity fuse for "Russia" (R. 511), the receipt of $1000 by David from Julius in May, 1950, to anticipate David's flight from the country (R. 543).

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The capacity of David to prepare the sketches he allegedly turned over to Julius and Gold was a controversial issue. Dr. Walter S. Koski, a scientist, had already been examined on these sketches (G. E. 2, 6, 7). Yet the trial judge prompted the witness to reiterate that these drawings, fabricated by David for trial purposes, did "set forth the important principle [of implosion] involved" (R. 482) and further re-examined on the same subject to produce the same answer (R. 485-86).

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Ruth was stating the purpose of the Greenglasses in taking passport pictures in the latter part of May, 1950. On a motion to strike "so that he [Julius] would think we were leaving", the trial court interspersed a series of questions to reemphasize that the photographs were taken at Julius' request. Only after this sensitive point of abetting flight had been re-impressed on the jury did the court grant the motion (R. 711-12). Intent on pyramiding the subject of flight, the trial judge persisted in re-extracting from the

witness Julius' statement that he also aimed to flee the jurisdiction (R. 713). Still not content, the judge re-exposed that the $1000 claimed to be delivered to the Greenglasses by Julius on May 24, 1950, came "from the Russians for us [Greenglasses] to leave the country" (R. 786).

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Gold had already described the incident of June 3, 1945, at Albuquerque, in which he and David "matched" the corresponding parts of a side of a Jello-box and had detailed the cardboard which David showed him as appearing "to be from the same part of the same packaged food from which the piece of cardboard that I had, had originally been cut." Peculiarly unsatisfied with this graphic portrayal, the Court trespassed to re-echo the dramatic event.

The Court: When you say Greenglass matched the two, just what did he do?

The Witness: He showed it to me and put them together, as nearly as I can remember.

The Court: How did you put them together to see whether the ends meet, is that what you did?

The Witness: No, just roughly. I mean you could see at a glance that they were the same thing (R. 825).

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The political issues held a special fascination for the trial judge. He accentuated that Sobell had recruited Elitcher into the Communist Party (R. 205) and restressed Julius' dismissal from Government service on charges of membership in the Communist Party (R. 241).

David was asked by the prosecutor on his direct examination which political system the Rosenbergs stated they "liked better". Objection was made and sustained, but the Court then put the indistinguishable query as to whether "they [the Rosenbergs] preferred one over another." The response was "they preferred Socialism to capitalism". The Court pursued "which type of Socialism?", the witness: "Russian Socialism" (R. 420). The answers were repetitive as they had since been made to a query from the

prosecutor only two questions back (R. 419-20). Again placing himself in the service of the prosecution, the trial judge adduced that the conversations continued over the years (R. 421).

* * * * * * *

Dorothy Abel, Ruth's sister, was under cross-examination as to specific declarations allegedly made by Julius in her presence with respect to the United States and the Soviet Union. The witness had replied that Julius criticized our Government because it was "capitalistic . . . that is about all I can remember." The following occurred:

Mr. E. H. Bloch: What else?

The Court: Is that the reason they assigned for preferring the Russian form of Government?

The Witness: Yes.

The Court: Was there discussion of the relative merits of the capitalistic form of Government as against communistic form?

The Court desisted only after defense counsel objected to the reintroduction of an answer already given on this inflammatory point (R. 790-91).

* * * * * * *

Prodded by the necessity to forge the nexus to link up membership in the Communist Party of the United States with the crime charged so as to attempt to supply its bearing on propensity, the trial judge engaged in a prolonged examination of Bentley to reaffirm and re-seal her testimony. Falling in with the Court, the witness recounted the "adhesive" (the Court's formulation) relationships between the American Communist Party and the Soviet Union (R. 978-79, 983); and the necessity of members to bend to the "party line as dictated by the Communist International" (R. 983). Having thus discharged the prosecutor's function, he then graciously deferred to protocol. Addressing himself to the prosecutor, he queried "Do you want to take it from there?" The prosecutor adjusted his reply "Yes, if I may. I think your Honor has well, I

wanted to make an observation but I do not think it is necessary. Your Honor has relieved me of a considerable burden" (*Sic*!) (R. 983). The prosecutor was allowed to ask but one more question and received the answer when the trial judge again interrupted and resumed his own interrogation along the same lines that he had already reviewed in extenso.

> The Court: I think I forgot to ask where the headquarters of the National or of the Communist International—was that in Moscow?
>
> The Witness: That was in Moscow, yes (R. 984).

Still the judge persisted. Breaking in between the conclusion of re-direct and the commencement of re-cross, he re-seized the reins of domination and imposed a recapitulation of the identical subject matter:

> The Court: Before you get into that [re-cross] let me make sure I have understood Miss Bentley's answers to what I consider the main issue and main purpose of her testimony—

And thereupon launched into a number of leading questions in the nature of a summation as to the instructions issued to members of the American Communist Party "orally and in writing, in a general way, to do everything to aid Russia" (R. 1013).

B. Protection and Rehabilitation of the Government Witnesses

Elitcher was embarrassed by a discrepancy between his story at the trial that Julius initially visited him at his home in June, 1944, and his statement to the authorities on his first interrogation fixing the date of the visit as "late 1943" or "1944, early, possibly." Defense counsel was seeking to expand on the patent disparity when the Court interpolated "I don't think you [Mr. Bloch] have done it yet" (R. 288).

* * * * * * *

The same witness gave different versions, on direct and cross-examination, of certain conversations he had had with Julius on a visit he and his wife had made to Julius' home in August, 1945. The United States Attorney, to deaden the sting of the conflict asserted "there were conversations that he [the witness] testified to on direct, that took place, and I don't want the witness misled or any impression created that now in his cross-examination he is leaving something that wasn't testified to on direct." Apart from the unpropitious character of the remark, since the prosecutor could have attempted to reconcile the inconsistency on re-direct, the Court cojoined to further obtund the point of attack with the coadunate comment "I think your observation is a sound one." The cross-examiner protested this unwarranted interjection. The Court then intimated to the defense counsel to frame a question, calculated to harmonize the contradiction, but the examiner politely declined the advance (R. 308).

* * * * * * *

Again, the trial judge negatived any misgivings the jury may have collected about Elitcher's reliability. Offsetting the admissions of this witness as to the differences between his testimony and his statements to the F.B.I. agents, and forestalling the requisite basis for a defense request to inspect the prior contradictory statement, the Court declared "I assume you [Mr. Bloch] are trying to do that [*i. e.:* to show the inconsistency]. You haven't shown it as yet." The remark was triply error:—it interfered with the province of the jury as the triers of the facts; it restored the integrity of the witness; it was factually misleading (R. 336-37).

* * * * * * *

Elitcher had failed to record on his direct examination his presence at Julius' home in the week of Christmas, 1946, although he had been asked, in chronological approach, his meetings with Julius. The cross-examiner:

> You forgot about that?
> The Court: [sua sponte, in ripost,] "He wasn't

> asked about it if I remember and it might have been nothing to the Government's case. There is a certain inference in your question that he deliberately withheld it."

Appropriate objection and exception to the remarks were duly noted (R. 342).

* * * * * * *

When cross-examination elicited that Elitcher purchased an automobile a few days before the trial at a time after he had lost his position, to suggest his assurance of immunity from prosecution for perjury in exchange for his testimony at the trial, the prosecutor objected. The Court overruled the objection, but added "You [Mr. Saypol] say there is no relevancy. I am inclined to agree with you but I am going to let him answer" (R. 346-47).

* * * * * * *

When David was trapped in a net of prevarications and inconsistencies, the trial judge labored to extricate him from the pit of untrustworthiness. This procedure occurred when David falsified the length of time he had not seen Julius from June, 1950, to the trial (R. 537); when David was exposed as a dissembler at the time he received $1000 in May, 1950, the Court defeated the blow by deviating from the matter at hand to reemphasize that the money came from Julius for the purposes of flight (R. 543); when David was hard pressed to explain his asserted moral doubts on the propriety of his participation in espionage in the face of the eloquence of his consistent course of conduct to the contrary, the judge insisted on a reconciliation of the repugnancy (R. 552-53); when David foundered to justify his honorable discharge from the Army despite his embezzlements and deliberate breaches of the espionage laws, the Court, disregarding that the cross-examination was delving into David's state of mind in the war years, circumvented to inquire of David's feelings as of the time of trial (R. 555); when David admitted he knew his sister, Ethel, faced the danger of a "possible death penalty" because of his testimony, thus baring to the jury his callous-

ness, and the judge essayed to repair the damage with the diversion "Do you realize also that the matter of penalty is a matter entirely within my jurisdiction, not within the jurisdiction of the jury" (R. 558).

* * * * * * *

David, in response to cross-query whether he failed to reveal to the F.B.I. interviewer in February, 1950, that he engaged in any illegal activity at Los Alamos answered "I didn't tell him, but I was pretty well on the verge to tell him." The motion to strike the latter part of the answer was denied (R. 566).

* * * * * * *

On another occasion, the trial judge disoriented the purport of the cross-examination with the question "Well, you had already confessed, hadn't you?", after a line of interrogation designed to show that David's relation to his fellow prisoners as to his intention "to fight this case against [him]" belied his claim of cooperation with the authorities from the time of his apprehension (R. 600).

* * * * * * *

The trial judge aided David when he admitted he did not mention his sister, Ethel, when interviewed in February, 1950, by eliciting that there was no discussion of Ethel or that David was not directed to discuss espionage, thus sterilizing the development of cross-examination to demonstrate David's wilful concealment of his own activities at Los Alamos and to allow the jury to infer the absence of Ethel's participation in any illegality (R. 566).

* * * * * * *

Cross-examination was embarked on a thorough probe to indicate discrepancies between David's statements to the F.B.I. on the night of June 15 and his trial testimony. Weakening the import of the antagonistic stories, the Court interjected "Well, did you conscientiously withhold any

facts that night?" David parroted in answer "I did not conscientiously withhold those facts." To refine the rationalization and thus insure complete face saving, the Court led David, now on guard, to state he told the authorities on the night of his apprehension "substantially" what he testified at the trial and that arrangements were projected at the time for his making a "subsequent statement" (R. 577-78).

Carrying the onus for the prosecutor, the judge strained to find facts to sustain David's claim he cooperated voluntarily with the authorities that same night by inquiring whether David had been advised of "his right to have a lawyer." David, attuned to the cordiality of the Court, fell in "Sure . . . just about when I started to make a statement." Then cross eked out the revelation that David was advised of his right to legal counsel after he had signed a statement (R. 580-81).

* * * * * * *

David was hazy about incidents and conversations that occurred within one year of the trial. The trial judge sustained the prosecutor's objection to the cross-question "But you do remember everything that your wife told you back in November 29, 1944?" (R. 583).

* * * * * * *

Admitting material omissions of incidents in his purported statement of the night of June 15, 1950, the trial judge was quick to recoup the loss for David.

The Court: Is there anything you testified here today that you haven't made in the previous statement?
The Witness: There isn't, no——(R. 588).

And, when the cross-examiner spotlighted the glaring incompatibility between the written statement and the testimony, the trial judge guided David to creep through the needle's eye of safety.

The Court: But you told them about it?
The Witness: I had told them about it (R. 590).

The Court: It wasn't your intention at that time to give every minute detail?

The Witness: Not intention but I couldn't remember every minute detail that had occurred (R. 592).

* * * * * * *

To confute David's claim he was concordant with the authorities when he was taken into custody, cross-examination developed his prompt confinement to a solitary cell in the West Street House of Detention. The trial judge opened the door to allow David to assign a speculative "reason" based on hearsay, in explanation of the restrictive restraint (R. 597), to equivocate on his retainer of counsel (R. 598) and to intellectualize his statements to fellow inmates that he intended "to fight the case" (R. 600).

* * * * * * *

The plausibility of David's ability to prepare the sketches of the lens mold and cross-section of the atom-bomb were placed in issue on his cross-examination and was in process of probe. The Court, interfering, inserted a string of liberating queries as to whether "the sketches [were] product of [David's] mind"; or whether he was "helped by anybody on the outside in drawing those sketches"; or "did anybody tell you to change any line here or change any line there?" The negative answers surprised no one. Then the judge turned to the cross-examiner "Now, ask your question" (R. 610-11). Continuing to expose the witness' stunted formal education and training, the defense questioner was soon to watch his path wrecked by an alien explosion. The Court: "and whether he might have turned something over, miscalculating a figure or making an error here and there, is not material to the charge, Mr. Bloch." It cannot be gainsaid that, so abstractedly stated, this dictum did not misstate the law but, in context, it was an irrelevancy on the issue of the witness' credibility, a fact acknowledged by the Court when he permitted further cross-examination on the subject of David's educational background. And the blast did screen the witness (R. 612-13).

Further, the witness conceded the sketches he made for the trial were drawn solely from memory when the Court injected:

The Court: And would you give the same reply with respect to the sketches that you said you turned over to Rosenberg . . .

The Witness: That is correct (R. 626-27).

. . . . . .

David's unreliability was exhibited clearly when he was under cross-examination in connection with the alleged statement of Julius to him on May 23, 1950, to the effect that Julius had obtained a lawyer in case of a "slip-up" in flight plans. The witness' confusion and uncertainty were evident. The Court interpolated: "You [Mr. Bloch] are covering a lot of dates here" (R. 657), a clichéd but clever stratagem to resuscitate the faltering witness.

. . . . . .

David was forced to disclose the animosity and the bitter quarrels between him and Julius while the two were associated in the "Pitt" business. The Court took the initiative to heal the wound.

The Court: And you saw him in 1950 after that?
The Witness: I saw him after that.
The Court: Even after you left the business?
The Witness: That is right (R. 664).

The cross-examiner pursued the subject of the contemporaneous violent antagonisms between David and Julius and dragged from David's lips the revealing fact that David had assaulted Julius. The Court donned the mantle of the prosecutor in his zeal to protect the witness, who clung to the security of authority.

The Court: Subsequent to that, had you patched things up?

The Witness: Certainly, we were very friendly after that (R. 665).

And then the Court followed up with repeated thrusts to ward off the sword of cross-attack that was marking the witness with scars of bias and self-interest (R. 665-66).

* * * * * * *

If David, the "star" spy witness for the Government, found shelter in the Court's preserve, it is not surprising that Ruth, the spy consort, was also given judicial sanctuary.

Ruth was asked whether she remembered "every detail from memory" when the Court interrupted: "She remembered. I don't know about 'every detail.' I think the question is objectionable. She remembered what she testified to" (R. 727). Now the quadruple mistake—the judge testified for the witness; the judge halted proper cross-examination; the judge attested to the accuracy of the witness; the judge infringed on the functions of the jury.

* * * * * * *

Ruth, on cross-examination, was directed to go over her conversation with the Rosenbergs in November, 1944. The cross-examiner, for the obvious purpose of showing the witness was only too well rehearsed, asked whether the witness' recounting of the incident was not a verbatim repetition of her direct testimony. The prosecutor objected; the following was the ruling.

> The Court: Your objection is sustained. I don't know exactly what the point is. If the witness has left out something, Mr. Bloch would say the witness didn't repeat the story accurately, and the witness repeats it accurately and apparently that isn't good.

Then, resustaining the objection, the Court remarked, "Mr. Bloch asked the question, the witness has answered" (R. 728). This was killing many birds with one shot. The judge protected the credibility of the witness and at the same time reproved the defense counsel for attempting to impugn her credibility. The exposition was a prosecutor's summation and at the same time curtailed the opportunity

of the defense to place its interpretation before the jury because the evidence was excised from the record.

* * * * * * *

The cross-examiner was seeking to ascertain from Ruth whether she meant to "confess" when David and she should be questioned by the authorities.

> The Court: [interjecting] It means to tell the truth. That means to tell the truth.

Defense pointed out to the judge he wanted the state of the witness' mind, not the meaning of the Court. Whereupon:

> The Court: Can you [the witness] answer the question?
>
> The Witness: [confused but compliant] Well, I have confessed everything I know about it. (R. 731.)

* * * * * * *

Ruth was being cross-examined as to whether she told her lawyer that she desired to be a witness for the prosecution. The question bore on the witness' motive for her trial testimony as, within the frame of reference, there were implications of the witness' expectation and plan to be immunized from prosecution as a result of an understanding with the United States Attorney's office. The District Attorney objected to the question.

> The Court: [in concurrence] That is right . . . she has no choice. I say she has no choice in whether or not to be a witness.

This dissertation epitomized the method of circumlocution of the Court to re-establish the probity of a Government witness, to insinuate the desired answer, and to devaluate the significance of the question. Even the Court, though grudgingly, recognized the blatant error which, incidentally, he took no pains to correct and then asked the same question: "All right, did you tell Mr. Rogge that you want to testify?" (R. 734-35).

Still probing for Ruth's state of mind when she was consulting with Mr. Rogge as to her hope not to be punished, the cross-examiner, in order to unearth the motivation for the trial story, was checked by the trial judge, and the point of his inquiries obviated.

The Court: [after warning the questioner to curtail his cross] And remember this, Mr. Rogge is not on trial.

Mr. A. Bloch: Oh, I am not talking about Mr. Rogge.

The Court: Oh, you have in every question, and furthermore Mr. Rogge was not authorized to speak for the Government and you must bear that in mind in your questioning.

Mr. A. Bloch: Your Honor, I don't want Rogge's mind. I want her mind.

The Court: Yes, I know very well what you want.

Mr. Saypol: Your Honor, this is getting away from it.

The Court: You want her mind, not your mind.

Mr. A. Bloch: No, not my mind, either. (R. 739)

* * * * * * *

Ruth was being examined on the Jello box side she allegedly obtained from Julius and kept for many months to match with the other side produced by Gold. When pressed to describe the printing or words on this Jello box side, she answered that her lack of knowledge of details "was not pertinent." The interlocutor's motion to strike the answer was granted and the witness admitted she had not looked at the object in her possession, when the Court disrupted:

The Court: Now let me ask you this: what was important to you?

Of course the witness accommodated her reply to say that her interest was confined to the use of the Jello box side as an identification medium to be matched with the expected courier's other side of the box (R. 773). To further cover the blemish upon Ruth's veracity, the judge added:

The Court: Excuse me, when the bearer of the other half of that side of the Jello box was to come to you, was it your

primary purpose in seeing whether the two sides would fit together like a jig saw puzzle?

The Witness: Yes.

The Court: Very well. (R. 773)

It is no wonder that the prosecutor was not constrained to utilize the leverage of redirect of the witness with the advantage of such interlineations of judicatory initiation.

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When Ruth charged Julius with stating that he was using the "Pitt" as a "front" to conceal his espionage interests (R. 775), she was confronted with the fact of Schein's bona fide investment of $15,000. She explained, "That is not the same thing." After a colloquy in which defense counsel articulated his purpose to clarify any implication left in the last answer, the Court declared, "She didn't imply anything. She said something." Yet immediately the witness admitted she was not trying to imply that Schein was a front. When pressed further to expose Schein's legitimate relationship with the business from which the jury could reasonably infer that "Pitt" was conducted on a sound basis, the Court sustained an objection to the question whether all checks of "Pitt" to be valid needed the countersignature of Schein (R. 776). Then, to afford the witness the opportunity to iterate her repudiated statement, it asked:

The Court: Did you say there was no connection between the Schein investment and your statement that you made concerning Mr. Rosenberg's statement?

A. Yes.

Q. When he said he could have the business as a front?

A. That is right. (R. 777)

The judge's solicitude towards Ruth was indulgent. As the facts indexed the improbability of the witness' story, he sought to expunge them from the minds of the jury either through censorship or sophistry.

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Dorothy Abel, after prompting questions from the Court, had recounted certain statements allegedly made by Julius with respect to preference for the Russian form of government over that of the United States (R. 791). To demonstrate the implausibility of the testimony of the witness, who was then 16 years of age, cross-examination was testing her formal training in courses on politics and related subjects at the time of the making of these statements. Objection to the question of the witness' age was overruled, but the Court characteristically commented:

The Court: It is proper. It might not be likely that she did it [courses, etc.], but it is proper . . . (R. 791)

What function was left for the jury?

* * * * * * *

Dr. Bernhardt had testified on direct that Julius had asked by telephone in May, 1950 whether he would furnish a smallpox innoculation certificate for someone he did not vaccinate. The cross-examination proceeded to inquire about his response to the F. B. I. agents when they first approached him for information on the subject.

Q. What did you say to that?

A. I said "to the best of my recollection he [Julius] had not," [asked for such certificate] (R. 856).

The Court, absorbing the shock of contradiction, then inquired directly whether the witness had not "volunteered" the information (*i. e.*, his direct testimony) "two or three days later" to the authorities. The response was in the affirmative: "I recalled the conversation two or three days later and I volunteered the information" (R. 857).

* * * * * * *

Bentley was under cross-examination. The defense was smoking out her immoral past by showing her extra-marital and illicit relationship with Golos in the years 1941 to 1943.

Q. In the eyes of the American law you were not living with his as legal husband and wife, is that not correct?

The prosecutor objected and the Court joined, "You can't generalize as 'American law' because I understand there are some states that recognize common law marriages" (R. 1000).

The defense counsel attempted to show the affinity was confined to New York.[1]

> Q. Well, will you kindly just think through it a little bit and tell us whether you lived with him outside of New York?
>
> A. I don't think that is necessary.

The impertinence of the witness was condoned.

> The Court: No, no, we have had enough of this subject. (R. 1000-01)

The interlocutor struggled further.

> Q. Would you characterize your relationship with Mr. Golos as your being the mistress of Mr. Golos?
>
> A. I don't feel I am called upon to characterize it. That is up to you . . . (R. 1001)

Again, overlooking the presumptuousness of the witness.

> The Court: No, I am going to sustain the objection. I think she is giving you the facts, characterization is unimportant.

Exception was taken to the Court's ruling, when the prosecutor made an objection in the form of a statement about getting to the main issues of the case.

> Mr. E. H. Bloch: I object to Mr. Saypol's statement.
>
> The Court: Don't take an objection on an objection. Let's go on. I have told you, go on. (R. 1001)

The Court's assumption of moral generosity was used as a shield for the peccable character of Bentley.

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[1] New York State does not and did not at that time recognize the validity of common-law marriages. N. Y. Domestic Relations Law, § 11.

A point was reached in Bentley's cross-examination when the "Julius" telephone conversation became the item on the agenda.

Q. Did you recognize the voice of the man you say called you up and said "This is Julius"?

A. What do you mean recognize?

Q. Are you a college graduate?

The Court: I must say that is ambiguous, recognize, what do you mean?

Q. Do you recognize whose voice it was?

The Court: You didn't say that.

And then the Court proceeded to its own formulation of a question in the same form as the examiner's (R. 1002-03). This was a judicial feat of combining naivete and developed discrimination.

The same method of impairing the effectiveness of cross-examination recurred a few pages later. The defense was unearthing the pecuniary motive of the witness and demonstrated she was a professional anti-Communist who profited from her lectures against Communism. When asked how many times she so lectured, the witness replied, "I simply have no idea." There followed:

Q. Have you lectured extensively on communism in the last two years?

Under objection from the prosecutor "How high is extensively",

The Court: Yes, I do not understand that either.

The defense concretized the question in terms of numbers.

Q. Was it more than five times?

A. It was certainly more than five times.

Q. Was it more than ten times?

A. [again arrogating to herself the prerogative of the Court] I really don't see where this is getting us.

The Court: Yes, I think she is absolutely right, and I think you have got enough of an answer there for the subject that you are after. (R. 1007-08.)

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Bentley's expert testimony on the workings of the American Communist Party was jolted when she admitted on cross-examination her ignorance of the happenings in the rank and file "units" of the organization.

Q. So you do not know, do you, Miss Bentley, as of your own knowledge, what went on at any of these [rank and file] meetings do you?

A. If you mean from '38 on, no.

The Court [robbing the cross of its vigor]: . . . But she continued as a member of the Party. (R. 1014.)

• • • • • • •

As Bentley was brought forward by the prosecution as the expert on communism, defense counsel, to impugn her reputation as an expert, desired to know from her whether she testified for the Government in the celebrated trial of the Government against the "Communist leaders" [*Dennis v. United States*, 341 U. S. 494 (1951)]. The Court, warding off the inevitable negative answer, the only truthful one, added insult to injury. Addressing the questioner,

The Court: Yes, but when I think that under the guise of impeaching the credibility of a witness you are dragging in not only the kitchen sink but the kitchen tub as well, I am going to stop it. (R. 1021-22.)

C. Hostile Cross-examination of the Defendants in the Course of Their Direct Testimony

The trial judge, intent on exploring the volcanic subject of the politics of the defendants, commenced early in Julius' direct testimony to detour the presentation into conflagrant roads. He injected to disrupt the chronological and logical sequence of events to ask Julius whether he had a discussion with Ann Sidorovich as to "the respective preferences of

economic system between Russia and the United States" (R. 1078-79), and again:

The Court: Did you approve the communistic system of Russia over the capitalistic system in this country?

The Witness: I am not an expert on those things, your Honor, and I did not make any such direct statement. (R. 1079.)

And further:

The Court: Well, did you ever belong to any group that discussed the system of Russia?

The witness was finally forced to take refuge in his privilege against self-incrimination (R. 1080). Not far later, the direct was dealing with the incident of the Greenglass' dinner visit to the Rosenberg home during David's 1945 furlough. An interruption:

The Court: Did you express any opinion that the Russians were not getting the cooperation from the Allies that they were entitled to?

A. No, I expressed the opinion that there should be a second front at that time. I don't remember if it was at that time.

The Court: What I am asking you, did you express the opinion that the Russians were not getting the cooperation from the Allies that they were entitled to?

A. I didn't express that opinion, sir. (R. 1085-86.)

The witness, Julius, had denied he ever turned over to Russia any material allegedly delivered to him by David.

The Court: Did you know any Russians at that time? By Russians I mean people who were Russian citizens . . .

A. You mean citizens of Russia?

Q. That is correct.

A. No, I didn't.

Q. Didn't know any at all?

A. Not at all. (R. 1099-1100.)

* * * * * * *

Ethel's views on politics were accorded similar treatment.

By the Court: What were your own views about the subject matter of the United States having any weapon that Russia didn't have at that time? That is, in 1944 and 1945.

A. I don't recall having any views at all about it.

Q. Your mind was a blank on the subject. . . . There were never any discussions about it at all?

A. Not about that, not about the weapon.

Q. Was there any discussion at all as to any advantages which the United States had to make warfare that the Russians didn't have?

A. No, nothing of that sort.

Q. You never heard any discussions that there should be equalization between Russia and the United States?

A. No, sir. (R. 1313-14.)

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Ethel had denied knowing any Russian.

The Court: You didn't know any Russian?

A. No, I didn't know any Russian. (R. 1324.)

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The trial judge implied disbelief in Julius' testimony. Julius had chronicled the conversation he had with David at the Rosenberg home in January, 1945, in which "he [David] said he was a machinist at that time (*i.e.*, in the Army) and he just repeated he was a machinist."

By the Court: Didn't you know he was a machinist in '44 when you saw him?

A. Yes, but he said he was a machinist at that time. (R. 1084.)

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The court attempted to circuit the orderly recital of the subject matter of the examination. Arresting its progress, the Court asked of Julius:

Q. Well, now, you had already met Mr. Elitcher, had you not, by that time?

A. What time?
Q. January.
A. January '44.
Q. '45.

The Court refrained only after defense counsel requested that the matter of Elitcher's visit be deferred until he came to the subject, according to the logic and the plan of direct presentation (R. 1085-86).

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The Court precipitated premature cross on the time in February, 1945, Julius visited and discussed with Ruth, in pursuance of her request (R. 1087), David's perspective to steal Army property (R. 1089), and by protracted questioning tried to confuse the witness.

The Court: She [Ruth] came to see you [Julius, the witness]?

Julius corrected the judge by pointing out that he came to see Ruth, but his efforts were fruitless. The Court followed, "She came to see you?", to which the witness rejoined, "She didn't come to see me" (R. 1090). But the witness' answers evoked only the skepticism of the judge, who imparted his disapprobation to the jury by sharp questioning as to the reasons for Ruth's seeking out Julius for advice (R. 1091).

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Julius had denied that Ethel typed any espionage material. The judge, in prosecutive manner, intruded:

The Court: Is your wife a typist?
A. Yes, she is.
Q. Do you have a typewriter at home?
A. That is right. (R. 1097.)

And, in prolonged encounter, he fastened his questions on Ethel's typewriting activities (R. 1098) raising derogatory implications. Picking up Julius' explanation that Ethel did practically no typing in 1944, except some sporadic volun-

teer work in the union of which Julius was a member. The Court hammered:

Q. You mean the union didn't have a typist there?
A. Well they had but she was a volunteer worker when I was a member of the union. (R. 1099.)

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Julius had denied any illegal associations in Schenectady, New York, to refute David's testimony on this point. Again to disparage the credibility of this defendant, the Court interrupted to bring out that Sobell was working at the General Electric plant in that city and then pressed to show a friendship between Julius and Sobell (R. 1107).

• • • • • • •

The order of Julius' recital was undermined by the judge on the occasion when he was on the subject of his business relationship with David. The Court, in an extraneous excursion, shot the following question:

Q. Did you have any discussion with Greenglass' about his going to Mexico?

The answer, of course, was negative, but the adumbration of the exculpatory testimony of the defendant was accomplished. (R. 1112-13.)

• • • • • • •

David's motive in implicating Julius was a vital issue for the jury's decision. The trial judge riddled Julius with inimical inquiries to invoke invidious implications.

Q. Now, up to this time [May, 1950] you had been having some heated arguments, as you call it, heated arguments with David, and take it you were not particularly friendly with him then?
A. Well I would say this: that I was not antagonistic to him. He was my wife's brother . . .
Q. But you were not friendly. That friendship had been strained?
A. Yes, there was strain.

Q. Can you think of any reason why on this occasion he would come to you and confess to you and ask you to help him out instead of going to somebody else?

A. I have no idea why he came to see me. (R. 1120.)

Again intervening two questions further, the judge extended his pointed examination as to Julius' failure to press David to divulge his specific trouble and enmeshment, and as to his limitation in conveying David's confidences to Ethel alone. Increasing the toxic dose, the judge injected more venom by queries as to whether Sobell informed Julius in advance of his travel to Mexico and as to when Julius ascertained this fact (R. 1120-21).

* * * * * * *

The inquisition of the Court was continuous. Julius had demonstrated his dearth of finances to indicate the unreasonableness of David's story that Julius had given him $1000 and an additional $4000 in 1950.

The Court: Well, Mr. Rosenberg, if it was the purpose that Mr. Greenglass has testified it was for, then it would be fair to suppose that the money would never come out of a bank account, isn't that so?

A. Well, it is not for me to say, sir.

The Court: All right. (R. 1124-25.)

It is equally fair to suppose that the judge's argumentativeness was out of place and that summation, under our law, was the role of the prosecutor.

* * * * * * *

Re-entering the fray of trial conflict, the Court, with pronounced bias, re-emphasized Julius' deficiency in failing to find out "what trouble David Greenglass was in" and, twisting Julius' natural reaction to restrict a family affair to the confines of marital trust, insisted:

The Court:

Q. You mean, you acknowledged [to Ethel] the fact that you had not been friendly [with Dave]?

A. No, of course.

Q. And despite that fact, when Greenglass came to you for help, you didn't say to him "Why come to me? We haven't been friendly. Go to some other relative or to some other member of the family."

A. Well, we weren't at each other's throats. He was my wife's brother.

Q. In other words, there hadn't been such a rift as yet.

A. No, there hadn't been. (R. 1126-28.)

The trial judge was relentless in hot pursuit to catch the prey.

The Court: And you can't think of any reason whatsoever, can you, why David Greenglass would, of all the people he knew, his brother, all the members of his family, single you out, as he did apparently and as you say he did, and say that you would be sorry unless you gave him the money?

The Witness: Well, he knew I owed—he had an idea that I owed him money from the business, and I guess that is what he figured he wanted to get the money from me. (R. 1131-32.)

Then counsel resumed his direct examination:

Q. Do you know whether Dave ever went to any of his other relatives to ask them for money?

A. No, I do not know that. (R. 1132.)

And then the Court, baring the fangs of prejudice, stepped up the chase.

The Court: And you do not know of any other relatives of Dave's outside of you and his [David's] sister [Ethel], who has been indicted, in connection with this case?

The Witness: No, I do not know of any other relatives.

The Court: We will recess until 2:20. (R. 1132.)

With this barrage, the judge demolished the barrier between the bench and the prosecutor's table and merged the functions of prosecution and judgment.

* * * * * * *

During Julius' questioning by the F.B.I. on June 16th, 1950, after David's apprehension, the F.B.I. agents told

Julius that David had accused him of espionage. They had not informed him either that David, himself, was accused of this crime, or that he had been arrested. When Julius testified that he had first learned of David's arrest from a newspaper bought after he had left the federal building, the court interjected:

Q. You mean you didn't believe what Mr. Norton and this other gentleman, Mr. Harrington [the two F.B.I. agents involved] were telling you?
A. They didn't tell me he was arrested.
Q. I mean, what Greenglass has said.
A. I didn't believe it. (R. 1142.)

By thus mis-stating the testimony, the judge sought to counterpose the defendant's credibility against the probity of Government agents.

* * * * * * *

Julius had testified to his resumption of normal existence at home and in business after this interrogation by the F.B.I. on June 16, 1950, and up to the time of his arrest one month later.

The Court: (now spreading over the record)

Q. Did you know whether you were under surveillance by the F.B.I. at that time?
A. No, I didn't know.
Q. Did you think you were?
A. It didn't matter.
Q. I am asking you whether you thought you were?
A. I don't know, your Honor. (R. 1143.)

On the follow up direct, the witness responded: "It occurred to me that they would have arrested me if they suspected me" (R. 1143) when the Court again intruded:

The Court:

Q. The answer is you didn't think you were under surveillance?
A. There was a possibility I could have been under surveillance.

Q. Did you think there was a possibility?
A. Yes, it entered my mind. (R. 1143.)

* * * * * * *

Julius denied any corrupt agreement or conduct with Sobell, the co defendant, and explained the social relationships between the two (R. 1146-48). The Court interfering cross questioned closely about these relationships and then, upsetting the logical sequence of the direct presentation, acridly diverted to the new subject of Elitcher's social ties with Julius. (R. 1149.)

The trial judge again intercepted the examination of Julius' visit to Elitcher (a subject the defense was now compelled to embark upon because of the judge's innovation, lest the jury draw any adverse inference if the defendant shied away from the subject at that point) to ask whether Julius was in Washington from 1940 to 1944, the year of Julius' first visit to Elitcher's home. (R. 1150.)

When direct examination was tentatively completed a few pages later, the Court eagerly stepped in before any cross examination started, to re examine Julius, as in cross, with respect to his social relationships with Sobell (R. 1157-58).

Then upon continuation of direct, Julius denied any meeting with Sobell and Elitcher on a New York street in June, 1948. The Court again pre empted the prosecutor's function by further cross examination.

The Court: Did you ever meet them together?
The Witness: Only in Washington, D. C. at that swimming pool.
The Court: Never since?
The Witness: Never since (R. 1158).

The interlocutor persevered to recapture the thread of direct when the Court again meddled with a line of questions on the relationships of the witness with Sobell and Elitcher (R. 1158-59).

* * * * * * *

Ethel's direct examination suffered the similar fate of constant interruptions from the trial judge. The Court's

questions were always slanted to create unfavorable inferences against the defense. So, casting aspersions on the corroborative testimony of Ethel that the controversial console table was purchased at R. H. Macy's and was not an illegal gift, the trial judge sought to find out whether Ethel signed a delivery receipt for the console table (R. 1298), and reverted to the purchase of this article of furniture in the following manner.

The Court:

Q. Did your husband do any other shopping by himself for furniture on any other occasion?

A. He did buy something else, at the time I believe he bought a lamp (R. 1299-1300).

He soon broke up the direct again to emphasize this same subject matter (R. 1300).

* * * * * * *

Ethel denied on direct that she had ever typed any matter relating to the national defense. The Court seized on the subject of "typing" to launch into an extensive examination, via her typing of Julius' answer to dismissal charges by the government, irrelevantly to ascertain whether Julius was a Communist (R. 1302-04)

* * * * * * *

Again assuming the prosecutor's function, the Court in sharp cross wanted to ascertain whether she knew David was working on an atom-bomb project, when she found out this fact, as well as when she discovered he was stationed at a secret post (R. 1312), to subvert her denials as they were made.

* * * * * * *

Ethel was in the midst of her denial of any Jello-box incident, as described by David and Ruth when the Court pressed: "Incidentally, did you have any Jello-box in your apartment."

A. Oh, yes (R. 1318).

* * * * * * *

Ethel was talking about her feelings of love for David, her "baby brother", in the past. The trial judge turned the discussion to David's feelings for her, in obvious attempt to procure corroboration for David's expressions.

The Court:

Q. Did he sort of look up to you?

A. Yes.

Q. And your husband? Before the arguments that were discussed here in Court.

A. He liked us both. He liked my husband.

Q. Sort of hero worship?

A. Oh, by no stretch of the imagination could you say that was hero-worship.

Q. You heard him [David] so testify, did you not?

A. Yes, I did (R. 1322).

* * * * * * *

Ethel was relating her illness in November, 1944, and January, 1945. The following question was before her:

Q. Now, during that period how old was your first born baby?

The Court did not wait for an answer but irrelevantly interposed his inveterate line of thought.

Q. But you saw your brother, didn't you, when he came in on his furlough in January, 1945.

A. Yes, I did.

Then, after this diversion had turned the jury, the witness was permitted to answer the interrupted question (R. 1325).

* * * * * * *

Ethel was relating Julius' account to her with respect to his visit to Ruth in February, 1945, in corroboration of Julius' testimony on this score that Ruth confided in him David's desire to steal from the Army. The Court, in a

transparent effort to belittle the veracity of the witness, engaged in the following exchange:

The Court:

Q. Well, you were in communication, were you not, with your brother, when he was at Albuquerque?

A. Yes.

Q. Did you ever, in any of those letters, tell him to be sure not to steal anything from the Army?

A. No, I didn't say anything like that in my letter (R. 1335).

* * * * * * *

Ethel was in the midst of telling Julius' recital to her of the incident when David asked him to procure a small pox vaccination certificate.

The Court: [insinuating] Did he [Julius] add why he [David] wanted that vaccination certificate?

The Witness: No, I don't recall my husband telling me anything of any reason for it (R. 1336).

The direct resumed for only two more questions and answers in which the witness said she was worried about David's situation when the Court again jabbed: "Well forget whether you were worried about it. What did you do about it?" The witness answered she and her husband could not help David because of their impaired financial condition (R. 1336).

* * * * * * *

Ethel, in refutation of Ruth's version, was describing the incident of her talk with Ruth in July, 1950. She denied she told Ruth to convey to David that he should not talk to the authorities, but affirmed that she assured Ruth of her steadfastness.

The Court:

Q. Did you want him to make a confession of his guilt at that time or did you want him to deny his guilt?

A. I wanted him to tell the truth, which ever it was.

Q. Even if it implicated him, is that right?
A. That is right.
Q. Then what do you mean by standing by him?
A. Well, I wouldn't love him any less.
Q. Is that what you meant by standing by him?
A. That is right (R. 1341).

D. The Court's Hostile Examination of the Defendants in the Course of Their Cross-examination

When the prosecutor took over the cross-examination of the defendants, they were caught in a cross-fire of two enemies, the prosecutor and the trial judge. It is difficult to record whose shots proved more effective.

Julius was describing the way he came to telephone Elitcher preliminary to his first visit to the latter's home in 1944.

A. Mr. Saypol, I was looking in the phone book for any names I could recognize as former classmates or people I knew at one time.
Q. Where did you look in this phone book?
A. At a telephone booth.

The Court: What names were you looking for?
The Witness: For some names I might recognize.
The Court: You mean, you started with "A" and started going——
The Witness: No, I didn't just start with "A". I thought of a couple of people's names who might be in Washington. I remembered the incident at the swimming pool at that time, that Elitcher was in Washington, and perhaps had a telephone.
The Court: What other names did you think of, do you remember?
The Witness: Sobell . . . and

Then the witness explained Sobell's name was not listed in the telephone book (R. 1168).

The witness, in answer to a cross-question, was in the course of relating the reception he received at Elitcher's home on this first occasion.

The Court: (vying with the prosecutor)

Q. Excuse me, did you know what he [Elitcher] was doing at that time in Washington?

A. He said he was working for the Navy Department.

Q. Did he volunteer that or did you ask him?

A. Well, as we were talking and I told him where I worked, when he replied he told me where he worked.

Q. Did you ask him what kind of work he was doing in the Navy?

A. He volunteered the fact that he was doing engineering work.

Q. On what, did he tell you?

A. Not specifically (R. 1170).

* * * * * * *

The witness was on the topic of his discussions with David on the relative systems of the United States and the Soviet Union.

The Court (taking command):

Q. Was that perhaps the topic that was discussed between you when you talked with Elitcher at his house in 1944 the year before?

A. No, it was not (R. 1173).

* * * * * * *

One page later came another judicial interruption pregnant with prejudice.

The Court:

Q. Did I understand you to say here, or if you didn't I ask you the question. Did you in 1944 or 1945 state, and I believe you stated on direct but I am not quite sure, that you had thought Russia was carrying the brunt of the war at that point?

A. That is right, sir (R. 1174).

* * * * * * *

Although the prosecutor was covering the subject thoroughly, he found himself superseded by the Court. In the interchange the witness was doubly pressured.

The Court:

Q. Well, now, did you feel that if Great Britain shared in all our secrets that Russia should at the same time also share those secrets in 1944 and 1945?

A. My opinion was that matters such as that were up to the Governments. The British, American and Russian Governments.

Q. You mean the ultimate decisions?

A. Yes.

Q. Well, what was your opinion at that time?

A. My opinion was that if we had a common enemy we should get together commonly (R. 1175).

* * * * * * *

The Court abetted the shabbiest and most inflammatory cross-examination of the prosecutor. In the light of David's story of his projected flight and Sobell's trip, Mexico was a volatile subject. The prosecutor asked Julius whether his friend, Al Sarrant, was in Mexico, after Julius had previously answered "No, I have no way of knowing his whereabouts." Then the prosecutor queried:

Q. Don't you know that he is in Mexico?

Defense counsel objected and moved for a mistrial. The Court denied the motion. No foundation had been laid by the prosecution to assume or presuppose any such fact; indeed, the prosecution never offered one shred of evidence to show that Sarrant was in Mexico. Yet the Court not only failed to correct the unwarranted and damaging inference but implied the correctness of the fact, by remarking, "It might mean something" (R. 1199-1200).

* * * * * * *

By now it had become plain that the trial judge intervened in the prosecutor's cross only to hurt the witness. He pounced on Julius to exploit the fact that one of the F. B. I. agents who had questioned him on June 16, 1950, later passed Julius' place of business although Julius had asserted the incident did not concern him (R. 1204); he

introduced confusion in the record on the telephone calls made by Julius to Elitcher on his first and second visits to the latter at Washington, D. C. by misplacing and reversing the times of the respective calls preceding the respective visits (R. 1216); he tried to confound and discredit the witness by comparing Julius' answer on cross as to Ruth's statement to him in February, 1945, that David wanted to steal "things" from the Army and his answer on direct where he added he thought "gasoline" as a possible subject of theft (R. 1221). He continued to badger the witness on this same incident by bringing out that Julius' failure to tell anybody about this confidential communication and his lack of caution in taking affirmative steps to prevent David from carrying out his illegal purpose to evoke either disbelief in his story or his lack of patriotism (R. 1221) and further widened the attack by emphasizing that Julius went into business with David in 1946 although he had heard from Ruth the year before of David's "larcenous ideas" (R. 1224) and that at no time did Julius reveal David's thieving predilections (R. 1225-26).

* * * * * * *

Julius was under cross-examination as to the watches he owned. To negative the testimony of David that he admitted he received a watch from the Russians, he accounted for all these personal articles, including a birthday present of a watch from his father in May, 1945 or 1946. An incursion:

The Court: What did your father give you the year before for your birthday?
A. He used to give me shirts, ties.
Q. What did he give you the year before that?
A. Clothing, clothing articles, usually.
Q. This year he gave you a watch?
A. That's correct (R. 1231).

Julius was then subjected to a twin-cross of examination and placed in an unfair position of answering questions on different subjects posed to him in rapid fire consecutiveness. Whereas the prosecutor was directing his inquiries to the

item of watches, the judge confounded the witness with questions on bonds (R. 1231). Then the prosecutor, continuing to query on watches, had to step aside for the judge's query:

Q. Where is that watch today (R. 1232)?

Now the items of watches was fixed on the judge's mind, and he subsequently remigrated to the subject, to put the witness through gruelling cross-examination (R. 1234-35).

* * * * * * *

Julius, after a sharp and thorough cross-examination, had demonstrated that his views on the Soviet Union were garnered from newspapers. The Court, though no further clarification was needed, implemented the point with a slanted series of questions:

Q. Would you say your only source of information from the statements which Mr. Saypol read to you was from newspapers?

* * * * * * *

Q. Not from any direct contact with anybody or what anybody said to you?

* * * * * * *

Q. You mentioned the papers; you mentioned them all (R. 1240)?

The witness adhered to his former answers but the unnecessary re-emphasis of the Court only tended to taint the plausibility of the witness' contention.

* * * * * * *

The judge never desisted to exert pressure to subject the witness to personal ordeal. On the subject of discussion between Julius and Ethel about the cause of David's difficulties, the court interrogated Julius as follows:

Q. Did you know at that time [May, 1950] that he [David] probably wanted the certificate to flee from the United States?

A. Sir, I didn't know what he wanted to do.
Q. What did you think?
A. I didn't know why he wanted the certificate.
Q. I mean, did the thought occur to you?
A. I didn't know what his purpose was . . . I tried to arrive at his purpose by questioning him.
Q. I know you say you don't know, but I am asking you, did the thought occur to you that he wanted it to flee the United States.
A. I didn't know, I didn't know what he wanted it for (R. 1254).

Then the prosecutor aped:

Q. Did you think at the time that he was contemplating flight from the country?
A. I have already answered that, Mr. Saypol, a number of times.

The Court: He answered. He said he had no thought on the subject (R. 1256).

Julius had assigned his interpretation for David's request to him for help in May, 1950, disclosing that one of David's brothers had then lost his wife, the other brother, never too close to David, was out of town and therefore "the only close relatives he had was my wife, who was his sister, and myself."

By the Court (to attenuate the logic):

Q. He wasn't going to her, he was coming to you.
A. That is right. He came to the shop.
Q. He didn't on any other occasion go to her, did he?
A. No (R. 1264).

• • • • • • •

Julius had expressed to Ethel his belief that David was attempting to "blackmail" him when David's request to him for money in May or early June, 1950 was rejected and David had warned Julius "I just got to have that money and if you don't get me the money you are going to be sorry" (R. 1130).

The Court:

Q. Blackmail you. When did he try to blackmail you?
A. Well, he threatened me to get money. I considered it blackmailing me.
Q. What did he say he would do if you didn't give it to him? You said he said you would be sorry.
A. Yes. I consider it blackmail when somebody says that.
Q. Did he say what he would do to you?
A. No, he didn't.
Q. Did he say he would go to the authorities and tell them you were in a conspiracy with him to steal the atomic bomb secret?
A. No.
Q. Do you think that was what he had in mind?
A. How could I know what he had in mind.
Q. What do you mean by blackmail then?
A. Maybe he threatened to punch me in the nose or something like that (R. 1269-70).

It taxes one's credulity to assume that the judge seized this opportunity for the mere display of his knowledge of a legal definition.

• • • • • • •

Finally, the judge re-emphasized the circumstances to raise the unfavorable inference that Julius did not inform the F.B.I. agents on June 16, 1950 about his May and June, 1950, conversations with David. Julius pointed out "since I was unaware of what troubles he was in, I would not aggravate his troubles by telling what my opinion of those troubles are" (R. 1275).

• • • • • • •

Ethel was also compelled to run the gauntlet of two cross-examiners. The prosecutor and the judge alternated to impugn her integrity.

The Court joined the District Attorney in inquiring about the watch Julius lost coming home from a vacation and his

report of the loss to the railway company (R. 1344-45.) Again, the Court added to the prosecutor's questions on the photographs taken by the Rosenbergs in May and June, 1950, and then interrupted the normal cross to question the witness sharply and extensively about the details of taking such photographs (R. 1362-63).

The prosecutor had pounded away at Ethel's invocation of privilege against self-incrimination before the Grand Jury in her two appearances in August, 1950, and continued to cling to the subject (R. 1373-77). Then the court, despite a thorough exploration of the questions involved, refastened on the jury's mind that the witness answered questions on the trial whereas she declined to answer on the grounds of self-incrimination before the Grand Jury (R. 1388-89) and then iterated (R. 1391), reiterated (R. 1393-94), reaccented (R. 1396) and re-emphasized (R. 1398) the same subject.

It is of interest that the judge indulged in no cross-examination of the Government's rebuttal witnesses. The comparison between his gentle, protective and defensive treatment of all the witnesss for the prosecution and his display of bias and hostility towards the Rosenbergs was so marked that no one could have remained in any doubt about the Judge's interest for a conviction. The cumulative force of his influence on the side of the prosecution depressed one of the scales of even handed justice and transformed the presumption of innocence into its opposite.[2]

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[2] For numerous other examples of interruptions of the Court to abet the prosecution and to undercut and disparage the defense and defense counsel, *see e. g.* R. 207-08, 217, 423, 427, 494, 525, 558, 570, 572, 578, 581, 586, 624-25, 633, 642, 654, 692, 735, 804, 816, 852-53, 916, 970, 973-74, 990, 994-95, 1045, 1114, 1122-23, 1204, 1218, 1252, 1260, 1280, 1285, 1290. Our adversion to many rebukes of defense counsel and holding them up to disdain is not raised because of any personal pique of counsel but as additional corroboration of the Court's display of animus towards the defendants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 112

MORTON SOBELL,

Petitioner,

vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Morton Sobell prays that a writ of certiorari issue to review a decision of the United States Court of Appeals for the Second Circuit, rendered February 25, 1952 (petition for rehearing denied April 8, 1952) which decision affirmed, Frank, C. J., dissenting, a judgment of the District Court of the United States for the Southern District of New York, I. R. Kaufman, D. J., convicting petitioner of conspiracy to violate former Title 50, Section 32, U. S. Code, and sentencing him to imprisonment for a term of thirty years.

Opinions Below

The opinions of the Court of Appeals are reported at 195 F. (2d) 583. The opinion affirming appears in the Rec-

ord at R. 1640;* and an opinion denying rehearing at R. 1709 (and see R. 1713). The dissenting judge also wrote for the court, and included his dissenting views within the court's opinion, R. 1663-7, 195 F. (2d) at pp. 600-602. The District Court wrote no opinion in the case.

Summary Statement of Matters Involved

Petitioner was convicted after trial by a jury in the United States District Court for the Southern District of New York on an indictment charging him and others [1] with having conspired between 1944 and 1950 to violate 50 U.S.C. Sec. 32 (Espionage Act, now 18 U.S.C. §794) in allegedly combining to transmit documents, writings, etc., and information relating to the national defense of the United States to the U. S. S. R. with intent and reason to believe that it would be used to the advantage of that country. Motions for a new trial and in arrest of judgment were denied.

Petitioner's conviction was affirmed by the United States Court of Appeals for the Second Circuit, with Judge Frank—who wrote the opinion of the Court—himself dissenting therein from affirmance of petitioner's conviction, on the ground that the trial judge had erred in failing to submit to the jury the question whether petitioner had actually joined the conspiracy charged in the indictment, or whether (if he had not joined) two conspiracies were shown by the evidence.

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* References "R. —" are to pages of the record as printed for the purpose of this petition.

[1] There were seven alleged co-conspirators named in the indictment. Two, Gold and Ruth Greenglass were not, however, named as defendants. Two others, David Greenglass and Yakovlev were not tried; the former, because he pleaded guilty (R. 175-6) and the latter because not present (R. 41). Petitioner was tried jointly with Julius and Ethel Rosenberg, who were likewise convicted and will be petitioners herein in No. 111 this Term.

The Two Conspiracy Issues

In August of 1950, the United States Attorney for the Southern District of New York instituted two prosecutions for conspiracy to violate the Espionage Act.

The one, against Morton Sobell, this petitioner, and Julius Rosenberg, was instituted by a complaint, sworn to August 3, 1950, in which the only overt acts laid were five "conversations" between petitioner and Rosenberg, in the period from January 1946 until May 1948 (R. 25.)

The other was instituted by an indictment filed August 17, 1950 (R. 4-6). The indictment named as co-conspirators David and Ruth Greenglass, Harry Gold, Anatoli Yakovlev, and Julius Rosenberg and his wife. The overt acts covered a series of events occurring between November 15, 1944 and January 14, 1945; one of them referred to "sketches of experiments conducted at the Los Alamos Project." Petitioner Sobell was not named in this indictment, filed two weeks after the complaint against him was sworn to.

These prosecutions of two separate alleged conspiracies were not merged until a superseding indictment was filed October 10, 1950 (R. 6). The superseding indictment has been described by the prosecutor as "in all respects identical" to the original indictment "with the one exception that Sobell was not named in the original indictment."[2]

None of the overt acts listed in either indictment referred directly or indirectly to this petitioner. By an order of the District Court (R. 23-24) which granted but a fraction of a motion by petitioner's trial counsel for a bill of particulars (R. 12-14), the Government was directed to state whether "they still charge the defendant Sobell with the commission of the overt acts set forth" in the separate complaint

[2] Government's brief in opposition to petitioner's motion in District Court to dismiss indictment, p. 2. The superseding indictment was ultimately superseded by the one under which the trial was held (R. 2-4).

against him of August 3, 1950. The Government answered "yes" (R. 24). At the trial, however, there was no proof made of any of the alleged acts.

The overwhelming bulk of the trial record is occupied by testimony relating to atomic espionage. David Greenglass, his wife Ruth, and Harry Gold, confessed and testified to the actual consummation of the substantive offense of espionage in the transmission by Gold of information concerning the atomic bomb and its development, which had been ferreted out by David Greenglass when he was stationed as an Army sergeant at Los Alamos. According to their testimony, the plan was hatched in November 1944, and consummated in two major installments in June and September 1945. The testimony of the Greenglasses was that the defendant Julius Rosenberg and his wife had successfully urged them to commit the crime of atomic espionage; the Rosenbergs denied the Greenglass story, insofar as it pertained to them, and their counsel sought to show that this branch of the Greenglass story was concocted in the not vain hope of obtaining leniency.

None of the testimony concerning "atomic espionage" involved Morton Sobell, this petitioner. He was not mentioned by any of the witnesses to the presumably successful atomic bomb enterprise, nor did any witness testify that petitioner ever knew or heard of the espionage activities of Greenglass, or his wife, or Gold, until their arrest as "atomic spies" was announced.

The only witness against this petitioner[3] was one Max Elitcher. Elitcher was a college classmate of both petitioner and Julius Rosenberg (R. 214). His testimony shows that petitioner was, like himself, an electronic scientist and specialist in "fire control" and electronic computation (R. 245, 248, 351). Petitioner may have advanced technically to

[3] Other than witnesses who testified concerning petitioner's presence in Mexico in the summer of 1950.

a higher degree of skill and recognition than Elitcher (R. 358). Elitcher and petitioner were employed in similar work at Reeves Instrument Company in New York from 1948 to 1950; prior to that, they had worked in separate localities from 1941 to 1948. Their only meetings between 1944 and 1948 occurred when Elitcher sought out petitioner (R. 210, 244-5, 248, 259); he admitted that he and petitioner as scientists and classmates spent a good deal of their time, when together, in talking "shop" (R. 254).

Elitcher had falsely signed a government loyalty oath and both before and during the trial was in a state of alarm about the penalties that might be inflicted on him (R. 278, 361). He had been reminded of his plight when brought to the office of the F. B. I. for interrogation (R. 281-3). He was not, however, ever tried for perjury (R. 292).

The part of Elitcher's testimony that was admissible, initially, against this petitioner consisted of: two requests in 1946-7 to see a pamphlet on "fire control", requests seemingly quite routine since they involved his and petitioner's common field of scientific interest (R. 245-7, 248) but which were permitted to be colored by the witness' "impression" that they had to do with "this espionage business" (R. 249); the convenient description of other conversations otherwise innocuous as having had to do with "this question of espionage" or as having included the exact words "this espionage business" (R. 211, 255); the alleged approval by petitioner of an alleged wish by Julius Rosenberg that Elitcher remain in Washington in 1948 for "this espionage purpose" (R. 257) (a purpose neither previously nor subsequently fulfilled by Elitcher; R. 276, 357, 360-1); and a story concerning a late evening ride which he said petitioner took to Rosenberg's apartment with the purpose to deliver "valuable" but otherwise unidentified information (R. 260-1); Elitcher said he was invited on

this ride *after* he told petitioner he was being followed by F. B. I. agents (R. 260, 361). There was no testimony by Elitcher concerning any other alleged co-conspirator, nor, of course, concerning "atomic espionage".

Thus, the individuals about whom, or by whom, testimony was given, consisted of two groups: there was only a single person belonging to both, the defendant Julius Rosenberg. The pattern of the trial was of a compartmentalization corresponding to the two separate prosecutions originally commenced. How insulated the compartments were was revealed when a question arose during the testimony of David Greenglass (a self-confessed atomic spy), as to whether certain testimony, vital to the prosecutor's case, should be heard in camera, or conceded. The judge expressed annoyance with the reluctance of Sobell's counsel to make the concession. It was, he thought, none of their business. "*Particularly as to your client*," he said; "*where do you come in on this phase?*" (R. 502)

Ultimately, in sentencing petitioner, the judge said to him:

> "The evidence in the case did not point to any activity on your part in connection with the atom bomb project" (R. 1620).

At the close of the Government's case, petitioner's trial counsel moved to dismiss on the ground that the proof had disclosed two conspiracies (R. 1041-8). The Court rejected the motion because he thought that sufficient nexus was shown by the presence of Rosenberg in each alleged group, and the alleged similar purpose of each to aid the Soviet Union (R. 1043, 1047). The motion was renewed at the close of the whole case (R. 1443-5) and objection was made in advance (R. 1450), and afterwards (R. 1569) with respect to the embodiment in the charge to the jury of a "single conspiracy" approach (R. 1557, 1560).

The jury was nevertheless instructed in the Court's charge that it had no choice but to find a single conspiracy, if any (R. 1560), and that petitioner was to be viewed, in consideration of guilt or innocence, as if the transmittal of the secret of the atomic bomb abroad were pursuant to his "command" (R. 1552), under conventional conspiracy doctrine.

The Court of Appeals, although affirming petitioner's conviction, acknowledged that "if in fact, Sobell is right that two conspiracies were proved, then prejudicial error has been committed, for Sobell was jointly tried with major atomic energy spies whose acts and declarations were held binding upon him" (R. 1664-5; 195 F. (2d) at p. 600).

Judge Frank of the Court of Appeals, who wrote its opinion, himself dissented from the affirmance of petitioner's conviction, and voted for a new trial. Passing over the question whether petitioner "could reasonably be held as a member of the Rosenberg-Gold-Greenglass conspiracy," Judge Frank viewed as improper the withdrawal from the jury of "opportunity to choose between the inferences and to decide whether he actually joined the larger conspiracy" (R. 1666; 195 F. (2d) at p. 601).

The Third Issue

Apart from the questions (1) whether petitioner had "conspired" with Julius Rosenberg concerning national defense information available to himself or Max Elitcher and (2) whether Julius and Ethel Rosenberg had conspired with the Greenglasses, and hence with Gold and Yakovlev, concerning the secrets of the atomic bomb, there was a third issue presented to the jury. This involved the significance of the alleged Communist beliefs and associations of the defendants. In the prosecutor's opening statement (R. 180), and in the order of proof, it occupied a preferred posi-

tion. The very first evidence to reach the jury, from the first witness, Elitcher, was that Sobell had invited him, in 1939, to join the Communist Party (R. 198, 203-5). The prosecutor returned to the subject, to dwell on the nature of petitioner's alleged activities in the Communist Party, which were confined to the period 1939-1941, and which consisted of "*discussion* of new events . . . *discussion* of Marxist theory . . . *suggestion*, recommendation to join . . . the American Peace Mobilization . . . *suggestion* to assist the American Youth Congress . . . support was to be obtained for the German-Soviet nonaggression pact for the Soviet Union's position, and *we were to talk* with people and to get general support for the existence of the party and its aims . . . to gain support from people around us for the position of the Soviet Union" (R. 226, 227, 229). (Emph. supp.)

Trial counsel for petitioner, and counsel for his codefendants, made prompt and vigorous objections to this line of testimony (e. g. R. 180, 198, 229-231) and moved for a mistrial or to strike it out at the end of the Government's case (R. 1037-40, 1041). Government counsel, conceding that "I don't think we can establish that the Young Communist League at meetings told members to go out and steal classified information"[4] claimed it should come in "to prove association, to prove motive, to prove intent" (R. 199). The trial judge ruled the testimony to be conditionally admissible: he did not avow that he perceived any relevance to any of the stated issues; but directed the prosecutor to show what was described as a "connection" (R. 199-200).

The "connection" was offered in the person of one Elizabeth Bentley (R. 965). Her testimonial qualification was

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[4] The context indicates this concession applied to the Communist Party as well. (R. 220.)

not that she knew any of the defendants, nor anything about any of the events with which the trial was concerned. It was her own "career", during an earlier period than that of the alleged conspiracy. Having recited her autobiography in capsule form, she was permitted to testify,—as the Court of Appeals summarizes her contribution: "that the American Communist Party was part of and subject to, the Communist International; that the Party received orders from Russia to propagandize, spy and sabotage; and the Party members were bound to go along with those orders under threat of expulsion" (R. 1655; 195 F. (2d) at 595).

The trial judge instructed the jury that such evidence was to be "considered by you *solely on the question of intent*, which is one of the elements of the crime charged herein"[5] (R. 1558). (Emph. supp.). The Court of Appeals made explicit what the trial court had not: that the theoretical basis for all this was that an "attitude" which could be viewed as "devotion to another country's welfare" permits the inference that its holder "is more likely to spy for it than other Americans not similarly devoted. Hence, this attitude bears on a possible motive for his spying or on a possible intent to do so" (R. 1654-5; 195 F. (2d) at 595).

If this reasoning is incorrect—we think it not only incorrect, but a departure from the "accepted and usual course of judicial proceedings"—the error was prejudicial in the extreme. For the Court of Appeals itself observed that the evidence was "highly inflammatory" and that "the Communist label yields marked ill-will for its American wearer" (R. 1655-6; 195 F. (2d) at 596).

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[5] In view of the instructions to the jury, it is not evident why the Court of Appeals referred to this evidence as bearing on "motive or intent". Although remarks during the trial indicated a tentative ruling with respect to motive (R. 202), this was superseded by the quoted portion of the charge.

"Treason"

The prosecutor was permitted to refer to the defendants as "these traitors" (R. 1535, 1517, 1518) or to refer to "these traitorous activities" (R. 183) and "their treasonable acts" (R. 184). The trial judge himeslf told the jury that "irrational sympathies must not shield proven traitors" (R. 1550).

Treason was not charged in the indictment, nor could it have been since the alleged beneficiary of the espionage was not a country with which we were at war.

Other Aspects of the Conduct of the Trial

1. The trial judge interrupted the questioning of witnesses on 210 occasions during the three week trial. It was argued in the court below, as that Court summarized in its opinion the contentions of the appellants, that the trial judge had "(1) emphasized key points of the government's case; (2) protected and rehabilitated government witnesses; (3) commented on evidence as immaterial or dismissed contradictions brought out by defense attorneys as not very important or convincing; (4) examined the defendants with hostility" (R. 1649-50; 195 F. (2d) at p. 593).

The Court of Appeals refrained from deciding whether the conduct of the trial judge, on its view of the record, supported the contention of the appellants, which it thus summarized. It introduced a subjective test of the propriety of such conduct: finding the *purpose* of the trial judge to be permissible, it did not consider its *effect*[6] (R. 1651; 195 F. (2d) at p. 593-4).

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[6] This petitioner takes a joint position as to this issue, with his co-defendants who will be petitioners herein in No. 111 this term; he respectfully begs leave, for purposes of brevity, to incorporate and rely upon the portion of their petition dealing with this issue, and the appendix thereto in which representative instances of the judge's alleged course of misconduct are particularized.

2. Petitioner also objected, in the Court of Appeals, to conduct of the prosecutor whose repeated insinuations that defense counsel was trying to exclude "the truth" (R. 250, 232), ill attempts at humor;[7] injection of inadmissible prejudicial statements in "questions" (R. 926, 1176, 1178, 1194-5, 1199-1200), were all calculated to influence the jury improperly. The Court of Appeals felt it to be an answer that the prosecutor was admonished from time to time, (R. 1667; 195 F. (2d) at p. 602), and that " 'loaded' questions were withdrawn before answering." (id.)

3. Petitioner was shown, by evidence so cumulative in character as to make a major issue of a subsidiary question, to have been in Mexico in the summer of 1950 (R. 857-67, 919-38). There was evidence that he was there for a vacation (R. 861) and he was accompanied by his wife and two small children (R. 31). He left the United States in June at a time when many tourist vacationers go to Mexico City, and prior to the arrest of Julius Rosenberg (R. 862, *cf.* R. 1137), the only alleged conspirator whom, it was testified, he knew. He had casually mentioned his intended departure and destination to a chance visitor, (R. 861-2). There was, however, evidence that after renting an apartment in Mexico City in his own name (R. 920-21), petitioner made trips outside that city during which he went by other than his own name.

The trial judge did not leave it for the jury to say whether the trip to Mexico was evidence of "flight," but so characterized it himself (R. 1559). Nor did he even require when

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[7] There was testimony sought as to whether a photographer who testified that he got more business on Saturday "did a rushing business".

"Mr. Saypol: Did you say a Russian business or a rushing business?"

"The Court: Try to restrain your desire to be another Milton Berle." (R. 1436-7.)

See also R. 252-3, 1268-9, 1270, 1362-3, 1403.

the evidence came in, that any foundation in the form of proof of guilty motive for departure be made.

4. Petitioner re-entered the United States in circumstances which were made the subject of a motion in arrest of judgment, in which the jurisdiction of the United States, and hence of the court below, over his person was contested.[8]

Petitioner did not choose to make an issue, at the trial, of the manner of his re-entry. The United States Attorney, for no reason to be found in the record, chose nevertheless to attempt to prove that petitioner had been "deported from Mexico." After an unsuccessful effort with a "loaded" question to an incompetent witness, (R. 926), he offered, as proof, a notation to that effect made on a record of another branch of the prosecuting agency (Ex. 25, read into record at R. 1031; offered at R. 938-43, 1024-9). Petitioner contended the card was both incompetent and irrelevant.

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[8] The facts disclosed in petitioner's affidavit in support of the motion in arrest showed: that while he was peacefully sojourning in Mexico City with his wife and two small children, he was taken forcibly by four men, who said they were police, but made a false accusation of robbery; prevented from communicating with the American Embassy; beaten until he lost consciousness; and taken, after desultory stops, to the American border where an American agent entered the car even before it reached the immigration station. (R. 31-33.) The record shows that other agents of the F.B.I. were present at the immigration station (R. 1030) and it is quite clear that their presence was part of a prearranged, single transaction. An appropriate inference from the sequence of events was conveniently stated by the prosecutor: "The F.B.I. caught up with him and brought him back and you have him here." (R. 1534.)

The trial judge denied the motion in arrest, and the accompanying request that a hearing be held to determine whether the assault and kidnapping of petitioner were acts done, participated in or instigated by officers of the United States. (R. 1587-99.) He rejected the claim that if this were shown, jurisdiction over petitioner's person fails as having been secured in violation of United States law and international agreement.

The Court of Appeals did not pass upon the question, resting its rejection of petitioner's claim on a ground of "waiver," in failure to raise the point before trial. (R. 1667-70, 195 F. (2d) at p. 603.)

No ground of relevancy was asserted at the trial in response to the trial counsel's objection. When the point was stressed on petitioner's appeal, the Government responded for the first time by the afterthought "Had it not been for that evidence the jury might have inferred that Sobell returned to the United States voluntarily (perhaps from a vacation in Mexico) and that he had always intended to do so" (Govt. Br. C. A. 2 p. 65-6). Petitioner never put the question of voluntary return in issue at any point during the trial; if he had, the evidence purporting to show deportation might, if admissible at all, have been proper only as rebuttal.

The Court of Appeals accepted the Government's argument, and also rejected the contention that the record shows that petitioner, never having had a choice as to whether to return to the United States voluntarily or involuntarily (in view of his kidnapping before he knew he was sought) should not have had used against him as evidence of "involuntary" return circumstances which did not permit exercise of his volition (R. 1667, 1669X; 195 F. (2d) at p. 602, 603).

The Context of Petitioner's Trial

The record shows by internal evidence (*e. g.* R. 57, 59, 63, 74, 153) that which the Court may know judicially: that attention was focused upon, and public emotions aroused by, the trial in the District Court to a spectacular degree.[9]

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[9] The setting of the trial marked it as the trial of the "atom spies". From the beginning to the end of the case this passion-rousing trademark was stamped on all three defendants. N. Y. Times March 7, 1951 ("3 Go To Trial Here As Atom Spies"); N. Y. Daily News March 7, 1951 ("Rosenberg Spy Trial To Bare Top Secret Atom Bomb Data"); N. Y. Times March 8, 1951 ("Theft Of Atom Bomb Secrets In War Stressed At Spy Trial"); N. Y. Times March 17, 1951 ("The Nation's First Atomic Spy Trial"); N. Y. World Telegram and Sun March 15, 1951 ("The Atom Spy Trial Here"); N. Y. Times March 22, 1951 ("The defense of three American Citizens Charged With Wartime Atomic

This could not have been entirely avoided when the first trial involving "atomic espionage" took place so soon after the shattering of the illusion of "atomic monopoly." Nor could a jury have been found which would have been immune to five years of public preoccupation with the danger of atomic devastion.

Statutes Involved

The indictment charged a conspiracy under former Title 50, Section 34, to violate former Title 50, Section 32, United States Code.

The pertinent text of these provisions is as follows:

> "§ 32. Unlawfully Disclosing Information Affecting National Defense.
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> (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided*, That whoever shall violate the provisions of this subsection in time of war shall be

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Espionage"); N. Y. Daily News March 28, 1951 ("Jury to Get Atomic Spy Case Today"); N. Y. Daily Mirror March 29, 1951 ("Atom Spy Jury Holds Fate Of Three"); N. Y. World Telegram and Sun March 29, 1951 ("3 A-bomb Spies Convicted); N. Y. Daily News, March 30, 1951 ("3 Guilty of A-Spying"); N. Y. Post April 1, 1951 ("All Three Were Convicted of Betraying U. S. Atomic Secrets to Russia").

punished by death or by imprisonment for not more than thirty years . . ."

"§ 34. Conspiracy to Violate Sections 32 or 33.

If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section 88 of title 18."

These sections have been replaced by Title 18, Section 794, U. S. Code, as of June 25, 1948.

Statement as to Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. Code, Section 1254. The judgment of the Court of Appeals for the Second Circuit was entered February 25, 1952; petition for rehearing was denied April 8, 1952. By order of Mr. Justice Jackson of April 30, 1952, the time to file this petition was extended to and including June 7, 1952 (R. 1715).

Questions Presented

1. Whether petitioner's conviction under an indictment charging a single conspiracy to transmit unspecified "information relating to the national defense" can stand, where the overwhelming proof at the trial dealt with a completed conspiracy to transmit atomic bomb secrets, in which it was conceded petitioner did not participate, and

(a) Whether on testimony purporting to show that petitioner conspired separately concerning non-atomic information with but one of the participants in the

atomic espionage conspiracy, (and without any evidence that petitioner had any knowledge whatsoever of the atomic espionage conspiracy) it may conceivably be found that a single overall conspiracy was proven;

(b) Whether in such a case, when objection is seasonably raised that the proof has disclosed two separate conspiracies, if any, the question whether petitioner did or did not in fact consent to an alleged dominant aim of the atomic conspirators must be decided by the court or the jury;

(c) Whether an interpretation of an indictment, conceived and presented for the first time in the Court of Appeals, that it was intended to refer to "any and all" information relating to the national defense, may be relied upon to sustain a joint trial under such indictment, where such intendment was never presented to the trial court, and never submitted to the jury;

(d) Whether on this record, it was error to deny a bill of particulars which would have enabled petitioner to learn, in advance of trial, that the charge against him did not involve atomic espionage, and permitted him to move on such ground, for a severance of his trial.

2. Whether petitioner was deprived of a fair trial, in violation of the Fifth and Sixth Amendments, when the charge against him was conspiracy to commit espionage and

(a) The offense for which he was being tried was characterized by trial judge and prosecutor as "treason";

(b) Highly inflammatory testimony of his membership in the American Communist Party, three years before the offense charged, is admitted, although not shown or held to have any bearing on the issues, except for such inferences as may be drawn from its capacity to show propensity or criminal tendency, and even the significance of such membership as showing propensity depends on imputation from association, without proof that petitioner's brief membership in-

volved more than the acceptance by him of quite lawful, although controversial, political beliefs;

(c) The conduct of the trial judge and prosecutor, in particular of a consistent and repeated pattern of the questioning of witnesses by the trial judge evidencing belief in the government's witnesses, and disbelief in the defense, was calculated to implant in the jury the court's belief in petitioner's guilt;

(d) Evidence of petitioner's presence, at a time before the trial, in Mexico, was received as evidence of "flight" without any foundation of guilty motive for departure, and given to the jury as "evidence of flight" without any choice as to whether it was, in fact, "flight";

(e) Evidence purporting to show that petitioner was "deported from Mexico" was admitted without any claim or showing of relevancy, and countenanced by the Court of Appeals on grounds not pertinent, or even raised at the trial (and whether the evidence was in any case competent as a "business entry" when made *post motem litam* by an employee of the prosecuting agency, without personal knowledge).

3. Whether the uncorroborated testimony of one witness can be sufficient to support conviction of conspiracy to commit espionage, where the prosecutor and trial judge repeatedly characterizes the offense as "treason."

4. Whether this conviction can stand when supported principally by testimony as to the conclusions and impressions of the only witness purporting to connect the petitioner with any conspiracy.

5. Whether the statute under which petitioner was indicted is constitutional as construed, and whether the indictment is sufficient if it fails to allege an essential element of the offense under the statute as construed.

6. Whether petitioner was entitled to a hearing, on his motion in arrest of judgment, as to whether he had been kidnapped from Mexico, by or at the instigation of United

States law enforcement officers, in violation not only of domestic, but international law.

Reasons for Granting the Writ

The unusually serious character of the charge, and the important problems of policy which are presented to the executive, the legislature and the people if the jury's verdict in this case was a correct product of fair procedure, are matters of national concern. The major questions presented by this petition are of the character that merit review by this Court; yet apart from their intrinsic legal significance, they arise from a setting where the courts below were susceptible to the temptation to make the "bad law" that sometimes attends cases suffused with the "impregnating atmosphere of the times." (*Dennis* v. *United States*, 341 U. S. at p. 528). The judgment affirmed below requires review with a detachment possible only in this Court.

The important questions raised by petitioner in the Court of Appeals were dealt with, even by that Court, in subordination to its consideration of the appeal of the alleged "atom spies." That court upheld petitioner's joint trial with such alleged "atom spies" only by resort to a construction of the indictment put forward by the Government for the first time on appeal. And even on this construction its decision was probably in conflict with this Court's decision in *Kotteakos* v. *United States*, 328 U. S. 750. A serious and separate question—and one of importance in general application—is presented by the point on which Judge Frank dissented, and on which there is a conflict of circuits: whether the judge may instruct the jury to find a single conspiracy, where the proof is at least equivocal as to whether two or more were proven.

The Court of Appeals most unexpectedly departed from the accepted and usual course of judicial proceedings, in

approving the admission of evidence of criminal tendency or propensity. This departure is in conflict with applicable decisions of this Court (e.g. *Michelson* v. *United States*, 335 U. S. 469); it involved, moreover, the introduction of such proof in a way in conflict with settled principles decided by this Court (*Haupt* v. *United States*, 330 U. S. 63; *Schneiderman* v. *United States*, 320 U. S. 118; *Knauer* v. *United States*, 328 U. S. 654).

The Court of Appeals, in evaluating by a subjective standard (what was the judge's purpose?) a claim of judicial expression of bias rather than an objective one (what was the effect of what he said and did?) has introduced a novel principle, not consonant with the scope of the Constitutional guaranty of a fair trial by an impartial jury.

The other questions of substance herein presented, as well as the foregoing, do independently warrant the exercise of this Court's power of supervision. In each there is presented, moreover, the pervading question of whether petitioner received a fair trial, a question which in this case must be settled with the authority of this Court.

I. Oppressive Use of the Conspiracy Device

Petitioner's Joint Trial with Alleged Atomic Spies

The "continuing threat to fairness in our administration of justice" arising from "loose practice" as to use of conspiracy indictments (*Krulewitch* v. *United States*, 336 U. S. 440, 446) has presumably prompted this Court twice, in recent years, to review claims of the particular sort of unfairness presented where there has been proof of more than one conspiracy, on a single conspiracy indictment. *Kotteakos* v. *United States*, 328 U. S. 750; *Blumenthal* v. *United States*, 332 U. S. 539. The unfairness which the courts have been cautioned to guard against has consisted, essentially, in the danger of "transference of guilt from one

to another across the line separating conspiracies" (*Kotteakos*, 328 U. S. at 754).

There has been no case in the history of the employment of the "dangerous instrumentality" of the conspiracy prosecution where the defendant occupied such an "uneasy seat"[10] as this petitioner, in the presence of "evidence of wrongdoing by somebody" else, so calculated to arouse the feelings of the jury against him, and to prevent the jurors from deliberating objectively on his guilt or innocence.

Of significance overriding any conceivable analytical discussion of the concepts of the law of conspiracy is the dreadful position of this petitioner at this trial—a position in which he was placed by the merger of two separate conspiracy prosecutions brought about by the superseding indictment. The prosecution must have known at the outset what it declined to reveal by way of bill of particulars and what the trial judge ultimately acknowledged: that "the evidence in the case did not point to any activity on [petitioner's] part in connection with the atom bomb project" (R. 1620). The record will be searched in vain for any evidence of knowledge on petitioner's part of atomic espionage. His culpability, if any, must be found in his alleged relationship as to other matters with a single co-defendant, Julius Rosenberg, a relationship that did not import knowledge of or acquiescence in atomic espionage. To have dragged this petitioner into a trial where his life was at stake, by merger of the two separate accusations of conspiracy, with knowledge that he had nothing to do with the atomic bomb, was diabolical. It was hardly the type of unthinking expedient which sometimes leads to two unrelated bootleggers or counterfeiters being tried together.

Ever since the disclosure of the dropping of the first atomic bomb on Hiroshima in 1945, the people of the United

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[10] *Krulewitch*, supra, at p. 454.

States have been warned incessantly of the sheer horror of the new weapon; "a state of intense public alarm"[11] was created, unprecedented in world history. The trial judge expressed, immediately after the return of the verdict, what had undoubtedly been in every juror's mind[12] throughout the trial and during all their deliberations: "The thought that citizens of our country would lend themselves to the destruction of their own country by the most destructive weapon known to man is so shocking that I can't find words to describe this loathsome offense" (R. 1580).

The Government did not deny in the Court of Appeals and that Court accepted petitioner's claim, that if "two conspiracies were proved, then prejudicial error has been committed" (R. 1664, 195 F. (2d) at p. 600).[13] The preju-

[11] Blackett, Fear, War and the Bomb (1949) p. 7. See for example:

"There is no defense against the atomic bomb * * * forty million human beings may be killed in half an hour." Hutchins, The Atomic Bomb versus Civilization, (1946) p. 7, 8; "the scientists' most striking victory of all time threatened on balance to become the heaviest blow ever struck against humanity" (Brodie, The Absolute Weapon (1946) p. 4); "a good chance of winning the war in the end, but what good was that if in the meantime the urban population of the nation had been wiped out" (id.); "This book is dedicated to humanity in the hope that it may exist longer than recent events lead us to suppose" (Brown, Must Destruction be Our Destiny (1946); "the construction of the atom bomb has brought about the effect that all the people living in cities are threatened everywhere and constantly, with sudden destruction" (Einstein, The Way Out, in Masters and Way, eds., "One World or None" (1946) p. 76; and see Los Alamos Scientific Laboratory, The Effects of Atomic Weapons (U. S. Government Printing Office, 1950) *passim*.

[12] See, e.g., voir dire, at R. 139: "[—A prospective juror:] . . . because I personally have seen the effects of the atomic blast at Hiroshima, I think my mind would be prejudiced in this particular case."

[13] The presentation of the prosecution's case was calculated to enhance the prejudice. There was the clearing of the courtroom for the purpose of "protecting" a portion of the Greenglass testimony (R. 505-10) despite the fact that if Greenglass and Gold were to be believed, the evidence was beyond protection (R. 828-30); there was "high-level" testimony as to the gravity of the atomic security breach. (R. 903-16); there was brought out in unnecessary detail the dealings of Gold with Emil Julius Klaus Fuchs, (R. 835-9) who has already been characterized in an opinion in this Court as "the most notorious spy in recent history."

dice was so great that only the clearest showing of logic and necessity could justify the merger of the two accusations of conspiracy, a showing not capable of being made here; yet the trial court gave the matter but superficial consideration, and the majority in the Court of Appeals had to strain to support the joint trial by relying upon a newly contrived interpretation of the indictment first presented in that Court by the prosecution.

The view expressed by the trial judge in upholding the prosecutor's "single conspiracy" theory, was demonstrably in conflict with this Court's decision in *Kotteakos* v. *United States*, 328 U. S. 750. The colloquies that ensued when Sobell's trial counsel moved to dismiss the indictment at the close of the Government's case (R. 1041-8) and at the close of the whole case (R. 1443-5) show that the trial judge thought it sufficient that petitioner had allegedly "worked with" (R. 1043) Julius Rosenberg, and the atomic conspirators were allegedly linked to the same man, and that there was an alleged similar purpose to send secret defense information (although not the same information) to the U. S. S. R. (R. 1047). The trial judge here was clearly

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(*Dennis* v. *United States*, 341 U.S. 494, 548.) Indeed there is an inconsistency still unexplained, between the acknowledgment by the prosecutor, and the trial judge of the separate status of Fuchs, and the trial court's reasoning in ruling that a single conspiracy had been proved below. The trial judge accepted, without reflection, the theory that two groups which had in common a single member—Rosenberg—and a parallel objective—sending information to Russia—constituted a "single conspiracy". (R. 1043.) Yet the prosecutor himself, and the trial judge, denied that where two groups overlapped by the presence of Harry Gold, they became merged into a single conspiracy. During the examination of Gold, Rosenberg's counsel became apprehensive of an attempt to inject conversations between Gold and Fuchs. The prosecutor disclaimed such intention and the Court remarked: "They are not putting it in to establish that a conspiracy existed between Gold and Fuchs." (R. 836-7.) Likewise, the prosecutor assumed and the Court readily acknowledged that one Slack who was said to have given information to Gold who said he gave it to Yakovlev, was not a co-conspirator with the defendants on trial. (R. 844-5.)

wrong—as the trial judge in the *Kotteakos* case had been [14] —in supposing that such facts *alone* merged the two groups into a single conspiracy.

The Government did not attempt to defend the trial judge's position in the Court of Appeals, on petitioner's appeal there. Instead it relied on an interpretation of the indictment which was itself advanced *for the first time* in the Court of Appeals, in response to petitioner's separate argument there concerning the sufficiency of the indictment. The petitioner had claimed that the generality of reference in the indictment to "information relating to National Defense" was bad; that there should have been specified, or enumerated, the species of the class of subject matter generally covered by the quoted phrase, which was charged to be the object of the conspiracy (*United States* v. *Cruikshank*, 92 U. S. 542, 557, 558; *United States* v. *Hess*, 124 U. S. 483; *Hammer* v. *United States*, 134 F. (2d) 592; *Lowenburg* v. *United States*, 156 F. (2d) 22; *Sutton* v. *United States*, 157 F. (2d) 661). The Government in response did not contest the petitioner's view as to the law: its position was that the grand jury intended to charge the defendants with conspiracy to transmit "*any and all* information relating to our national defense" and so, the indictment could not have been more specific (Govt. Br. C. A. 2, pp. 23-4). But the Government's brief did not explain why, if that was what the grand jury had intended to charge, it did not do so.[15]

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[14] See Judge Learned Hand's opinion in *United States* v. *Lekacos*, 151 F. (2d) at p. 172-3; and discussion in this Court, sub. nom *Kotteakos*, 328 U.S. at pp. 754-5; 768-9.

[15] Nor did it explain why the prosecutor had opposed a motion for a bill of particulars, in which request was made that the Government state "what information was the object of the conspiracy intended to be charged in the indictment (R. 13) by the statement under oath that "The facts sought . . . are in essence and by their very nature evidentiary" (R. 16). No facts of an evidentiary character would have been revealed by a

The "*any* and *all*" theory, thus raised for the first time on appeal, but never submitted to the jury as the standard for determining the defendants' guilt, was not only relied upon by the Court of Appeals in upholding the indictment, but also resorted to as providing the singleness of purpose absent from the trial judge's stated criteria suppose to support the trial on a theory of single conspiracy (R. 1665; 195 F. (2d) at p. 601). The result is a denial of justice in conflict with the Fifth and Sixth Amendments,[16] see *Cole* v. *Arkansas*, 333 U. S. 196.

The post trial resort to the "any and all" theory is also an indefensible method of vitiating entirely the protection on which the *Kotteakos* case was intended to afford against the transference of guilt in a conspiracy trial. It could as easily have been said of the defendants in that case that their "common" purpose was to secure fraudulently "any and all" loans from the F.H.A. There has not, indeed, been a case of the *Kotteakos* type, that could not be transformed into a single conspiracy by applying to the "similar" objectives of the alleged conspirators the magic of the

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response that "any and all" information was the object of the conspiracy. The only credible explanation is that the "any and all" concept was invented to meet the exigencies of petitioner's appeal.

[16] An additional and substantial question thus presented is whether an indictment so ambiguous can be sustained on its face. There survives, even in the modern "liberal" practice as to draftsmanship of indictments, the requirement that an indictment be plain enough to protect against double jeopardy (e.g. *Hagner* v. *United States*, 285 U.S. 427, 431; *Berger* v. *United States*, 295 U.S. 78, 82). The actual indictment here, however, gave the prosecutor the choice of whether to prove the subject matter of the conspiracy to be *some* information related to material defense, or *any and all* such information. An acquittal below would not, in the absence of express inclusion of the "any and all" phrase, have prevented a new indictment, based on some national defense information other than that which had been the subject of the trial below. Obviously, apart from the admission subsequently made in the Government's brief in the Court of Appeals, the double jeopardy defense could be answered by the claim that the first indictment intended only to cover the particular information that might have been the subject of the trial under it.

"any and all" phrase. In a petition for rehearing below, we demonstrated how the Court of Appeals itself had at one time, in its own decision on rehearing in *United States* v. *Liss*, 137 F. (2d) 995, 1006, rejected the "any and all" approach, shown by the record in that case to have been pressed upon the Court by the United States Attorney there (Point I of Sobell's Petition for Rehearing, C. A. 2, R. 1702-3).

The majority of the Court of Appeals implies that the existence of the "common end" of transmitting "any and all" information makes inapplicable the ruling in *Kotteakos* because, it says, in that case "each defendant was interested in obtaining his own fraudulent loan only" (R. 1665; 195 F. (2d) at p. 601). This is to stretch beyond the limit of logic a conception of imputed "interest." Common sense rebels at the imputation to petitioner of constructive, acquiescent "knowledge" of atomic espionage by analogy to the imputation to a whiskey salesman of acquiescent knowledge of the activity of another whiskey salesman.[17]

The invention of the nuclear weapon was an event of such transcendent significance as to forbid such a result "The release of atomic energy", said President Truman,[18] "constitutes a new force too revolutionary to consider in the framework of old ideas." Mr. Bernard Baruch said in his opening statement to the United Nations Atomic Energy Commission: "Science has torn from nature a secret so vast

[17] The reference to *Blumenthal*, in the opinion of the Court of Appeals, is based on a serious misconception as to what this Court held there. It was stressed in this Court's opinion that that case involved "special circumstances" (332 U.S. at p. 557) of a different state of proof against two groups of defendants, with respect to what was actually the same transaction the black market sale of a single shipment of whiskey. The "unique facts" in that case (332 U.S. at p. 559) involved evidence admissible against two out of five defendants only, as to the role of an unknown owner; this Court said this difference added "no essential feature" (332 U.S. at p. 557) to the proof against defendants as to whom testimony of his existence was not admissible.

[18] Special Message to Congress, October 3, 1945, 91 Cong. Rec. 9369.

in its potentialities that our minds cower from the terror it creates."[19] Said Professor Brodie: ". . . to speak of it as just another weapon was highly misleading. It was a revolutionary development which altered the basic character of the war itself."[20]

The panoply of military, diplomatic, legislative and administrative measures ushered in with the beginning of the Atomic Age—the very nationalization, in a "free enterprise" country, of atomic energy production[21]—all go to underline the point that "the new physical force was really something different, that it was even a different kind of a difference."[22]

It is this "different kind of a difference" which makes it in any event untenable that atomic secrets should be regarded as so related to other types of information relating to the national defense as to be subject to being embraced by the indiscriminate "any and all" approach. Even if the question had been submitted to them (it never was), could a jury rationally have found that petitioner had shared a "consent to the dominant aim" of a character sufficient to hold him as a co-conspirator with alleged "atom spies," without even knowledge on his part of their activity? Whether or not there was an "implied understanding," as charged, between petitioner and Julius Rosenberg with respect to electronic information, it could not be stretched to extend to such a departure. See quotation from *United States* v. *Peoni*, 100 F. (2d) 401, 403, in the dissenting portion of Judge Frank's opinion (R. 1666; 195 F. (2d) at p. 601) and *United States* v. *Crimmins*, 123 F. (2d) 271, 273:

> "Courts do indeed say that each conspirator is chargeable with the acts of his fellows done in further-

[19] Quoted in Blackett, Fear, War and the Bomb (1949) p. 145.
[20] Brodie, The Absolute Weapon (1946) p. 4.
[21] 42 U.S.C. 1801 et seq.
[22] Brodie, supra, n. 20, p. 4.

ance of the joint venture; but into that must be read the condition that acts so imputed must be done in the execution of the venture as all understand it . . . it is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators, unknown to the rest, have done what was beyond the reasonable intendment of the common understanding."

Judge Frank's Dissent and the Conflict in Circuits

The Court of Appeals passed upon a separate question, in respect of petitioner's contentions as to the *Kotteakos* doctrine, on which its decision is in conflict with the decision of the Court of Appeals for the Third Circuit in *Lefco* v. *United States*, 74 F. (2d) 66, and in principle, in conflict with this court's recent decision in *Morisette* v. *United States*, 342 U. S. 246. The question, which evoked Judge Frank's dissent below, is whether, in a conspiracy trial, where there is a choice of inferences to be made upon the outcome of which it will be determined whether one, or more than one conspiracy was proven, that choice is to be made by the judge or the jury.

The question, apart from the conflict in circuits produced by the decision below, is of obvious importance in the administration of federal criminal justice, where the practice of employment of the conspiracy device, for tactical and strategic advantage has persisted unabated despite intermittent solemn admonitions from appellate judges and justices.

Judge Frank wrote for both the court below, and for himself as dissenting judge, in discussing the point. However, the views he stated on behalf of the judges with whom he disagreed, went only to the question discussed above, as to whether, on this record, a single conspiracy *could* have been found. He did not state why the majority disagreed with him as to his conclusion that the question "should have

been submitted to the jury"[23] (R. 1666; 195 F. (2d) at p. 601).

The Third Circuit wrote in the *Lefco* case:

> "Whether the proofs establish the conspiracy alleged by an indictment or establish several conspiracies not alleged may, however, be a valid question and in such case it is a question of fact for the jury" at p. 69 of 74 F. (2d).

In petitioner's case, as the instructions to the jury disclosed,[24] and as Judge Frank's opinion demonstrates, there was a directed verdict, on the question of whether there were one or more conspiracies. "In effect" said Judge Frank, "he charged that if the jury believed Elitcher's testimony, Sobell was a member of the larger conspiracy charged in the indictment" (R. 1666-7; 195 F. (2d) at p. 601-2).

The silence of the majority of the Circuit Court on this question makes it impossible to understand their basis for viewing the case as one in which "the jury could and did

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[23] Other multiple conspiracy cases—including a decision in the Second Circuit—have seemed to regard the question as one of fact for the jury. *United States* v. *Griffin*, 176 F. (2d) 727, 733 (CCA 3-1949) ("There is ample evidence from which the jury could find that the fraudulent passport operation was but one conspiracy") *United States* v. *Rosenberg*, 150 F. (2d) 788, 773 (Second Circuit) ("Sufficient to justify the jury, in the light of the careful instructions it received from the Court, in finding a close inter-relation between this and the other transaction"). Even in the *Blumenthal* opinion of the Ninth Circuit it was stressed that it was "the jury" that "was justified in inferring that appellants were parties to a single agreement and conspiracy." 158 F. (2d) 883 at p. 888. Indeed, in *United States* v. *Ganey*, 187 (2d) 541, the same United States Attorney who prosecuted petitioner, argued to the Second Circuit that "the jury was justified in inferring that appellants were parties to a single conspiracy." (Govt. Br. C.A. 2, p. 12.)

[24] "Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point that out because the Government contends that Sobell was in the general conspiracy to obtain information of a secret nature." (R. 1560.)

reasonably find that Sobell consented to the dominant aim, and so became a member of the Rosenberg-Greenglass-Gold conspiracy" (R. 1665-6; 195 F. (2d) at p. 601). The question of "consent" to the dominant aim was taken from the jury by the trial judge. His instructions directed the jurors to find such consent if they believed Elitcher's testimony concerning non-atomic "espionage." But the issue of "consent" to the dominant aim is no different from a question of "intent"; and such a "question of fact . . . must be submitted to the jury." *Morissette* v. *United States*, 342 U. S. 246, 274. The "trial judge may not withdraw or prejudge the issue" (id.).

The instructions given in respect of Sobell's guilt or innocence necessarily withdrew and prejudged the question —the jury was told that if petitioner was guilty of any conspiracy, it was the single, major conspiracy visualized by the trial judge.

> "Had the jury convicted on proper instructions" [it might have been] "the end of the matter. But juries are not bound by what seems unescapable logic to judges" (*Morissette, supra* at p. 376).

The Denial of Particulars and of Opportunity to Move for Severance

The defendant Sobell, petitioner here, was not given any warning of the limited nature of the charge against him by the indictment. He made motion for a bill of particulars (R. 12-14) which was cut down, after reargument (R. 17-24) to a most limited area: (1) the date he was claimed to have joined the conspiracy and (2) whether the government still relied on and intended to prove the overt acts alleged in the original complaint against him, sworn to August 17th, 1950. The answer to the second was in the affirmative (R. 24) and yet at the trial, the prosecution proved none

of these acts. It is most unfair that a defendant should be so misled.

Sobell's petition for rehearing in the Court of Appeals points out, moreover, how the denial of more adequate particulars to him, constituted in itself reversible error (Point III of Sobell's Petition for Rehearing, C. A. 2, R. 1706-8). In the interests of brevity, we respectfully refer to Point III of that petition which went unanswered, except by denial without opinion, by the Court below. As was shown in that petition, if petitioner and his counsel had been adequately apprised, they might have successfully appealed to the discretion of the District Court to grant a severance —even if the conspiracy were "single." The pre-trial rulings on the indictment and request for particulars had the necessary effect of denying opportunity even to seek exercise of discretion.

II. The Prejudicial Evidence as to Political Beliefs

Employment of Evidence of Propensity

Petitioner was on trial for conspiracy to commit espionage on behalf of the Soviet Union, from 1944 to 1950.

Evidence was introduced of his membership in the Communist Party in 1939-1941.[25]

The time of the trial was one of "heated public feeling against Communists."[26] We need add nothing to the observation of the Court of Appeals that "of course, such evidence can be highly inflammatory in a jury trial. This court and others have recognized that the Communist label yields marked ill will for its American wearer" (R. 1655-6; 195 F. (2d) at P. 596).

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[25] Despite solemn representation by the U. S. Attorney that this would be proved up to the date of the conspiracy (R. 199), there was no proof later than 1941.

[26] *United States* v. *Dennis*, 183 F. (2d) 201, 226.

It has, until now, been the "accepted and usual course of judicial proceedings" in the United States and Great Britain, to guard to the utmost against "the deep tendency of human nature to punish, not because our victim is guilty this time, but because he is a bad man and may as well be condemned now that he is caught". Wigmore, Evidence, Section 57 p. 456. A "fundamental demand for justice and fairness" requires exclusion of evidence of "criminal tendency" *Lovely* v. *United States*, 169 F. (2d) 386, 389. The opinion of the Court of Appeals presents an unaccountable departure from this standard.

The deeply imbedded rule against use of evidence of criminal propensity, tendency or disposition has recently been restated by this Court. *Michelson* v. *United States*, 335 U. S. 469. Such evidence is to be excluded, according to the A. L. I. Model Code of Evidence,—"Where the series of inferences on which the relevance of the evidence depends is from the commission of the other wrong, to a disposition to commit such a wrong . . . thence to the commission of the particular wrong" (Rule 311, Comment).

The Court of Appeals, however, reasoned:

> "But one may reasonably infer that [an American who had expressed devotion to another country's welfare] *is more likely to spy for it than other Americans not similarly devoted.* Hence this attitude bears on a possible motive for his spying or a possible intent to do so when there is other evidence in the case that he did such spying" (R. 1655; 195 F. (2d) at 595) (emph. suppl.).[27]

Evidence which is independently relevant to prove "intent" is not necessarily rendered inadmissible because it

[27] While the Court of Appeals refers here to "motive" or "intent" the trial judge gave the evidence to the jury solely on the issue of intent. (R. 1558.) Cf. *Bollenbach* v. *United States*, 326 U.S. 607; *Cole* v. *Arkansas*, 333 U.S. 196.

also proves disposition or criminal tendency. But evidence of criminal tendency is not made admissible merely by characterizing it as evidence of "intent."[28] Nor is it made admissible because it is limited to showing an ingredient of guilt, rather than guilt *per se*. Evidence of Communist Party membership was not said by the Court to have any significance in relation to "intent" other than its showing of propensity.

The law requires more than this. It requires a showing of logical relevance *apart* from the showing of criminal tendency.[29] The route must be other than via propensity. Relevance independent of criminal tendency is shown, for example, where recurrence will negative a possible claim of mistake or accident (Wigmore, Evidence, Section 242, p. 302). "A forged document has peculiarities which a man handling it can, frequently, readily detect. Hence the mere evidence of his handling other notes is relevant to guilty knowledge quite apart from disposition. On the other hand there is no quality about stolen property, awareness of which on previous occasions will teach a man to recognize

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[28] Compare *Commonwealth* v. *Peay*, 369 Pa. 72, 85 Atl. (2d) 425, where the Supreme Court of Pennsylvania reversed a conviction for assault in a labor dispute, on the ground that evidence of Communist affiliation was incorrectly accepted by the trial court as relevant to "motive".

[29] Even when such evidence is admissible on a ground independent of propensity, it requires more than a "possible" bearing (R. 1655; 195 F. (2d) at p. 595) to justify letting it in. "Greater caution is required," suggests Wigmore (sec. 216, P. 217) "because if we are too liberal or too loose in not exacting an adequate degree of relevancy or probative value for the allowable purposes, we admit evidence whose dominant bearing is a dangerous and forbidden one." This Court has recently recognized that "much evidence of real and substantive probative value goes out on considerations irrelevant to its probative weight but relevant to possible misunderstanding or misuse by the jury." *Brinegar* v. *U. S.*, 338 U.S. 160, 173, and see *Shepard* v. *United States*, 290 U.S. 96, 104.

In respect of the defendants Rosenberg, it was conceded by the prosecutors that evidence of Party membership was a matter "that I might consider not worth occasioning great delay". (R. 416.) Neither was it worth occasioning the "ill will" (R. 1656; 195 F. (2d) at p. 596) engendered for petitioner.

other stolen property on another occasion." *Stone, infra*, 51 Harv. L. Rev. at p. 1002.

The most penetrating analysis of the phase of the rules of evidence with which we are here concerned is found in the articles by Julius Stone on "Exclusion of Similar Fact Evidence", 51 Harv. L. Rev. 988 (American); 46 Harv. L. Rev. 954 (England). His analysis is the basis for the formulation of the applicable rules in the American Law Institute's Model Code of Evidence. His thesis concerning development of a "spurious rule" of exclusion, in which evidence of other wrongs is admitted only when fitting into a pigeon-hole marked "Identity" "Motive" "Intent" and the like, exposes much of the confusion and error in this branch of the law. He described a process which was unwittingly followed by the Court of Appeals below:

> "In the third place the spurious rule becomes even more fruitful of chaos because it has tempted the courts to dispense altogether with the test of relevance. The mental process behind this is rarely explicit, but it may be stated somewhat as follows: 'An exception to the general rule of exclusion is where the other offenses are put in "to show intent". Here the prosecution offers to put in such evidence to show intent. Hence the evidence is admissible.' Obviously, what has happened here is that the meaning of 'to show intent' has changed from 'relevant to show intent' to 'for the purpose of showing intent' . . . all that such evidence is then relevant to, is the evil disposition of the accused, and, behold, the bottom has dropped entirely out of this branch of the law" (at p. 1007 of 51 Harv. L. Rev.).

The only route discovered by the Court of Appeals, via which it could find evidence of Communist Party membership to be relevant to show "intent", was by way of the fact that it showed disposition; "more likely to spy for it". "But when the prior crime has no other relevance than

that, it is inadmissible." *Boyer* v. *United States*, 132 F. (2d) 12, 13. The inquiry must always be: "Is the evidence in any way relevant to a fact in issue otherwise than by merely showing propensity?" *Stone*, *supra*, 51 Harv. L. Rev. at p. 1004; see also pp. 1005, 1008, 46 Harv. L. Rev. at p. 966 and *passim*. Dr. Stone cites the "great case" of *Makin* v. *Attorney General of New South Wales* (1894), A. C. 57, as establishing "a broad rule of admissibility where there is relevance, except where the only relevance is *via* disposition" (46 Harv. L. Rev. at p. 975):

> "It is certainly 'more probable' that a crooked official did steal than if he were an upright one. Yet our law forbids these very premises." *Railton* v. *United States*, 127 F. (2d) 691, 693.

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The serious error—and dangerous precedent—which would be left undisturbed, if this Court did not review the decision below is so manifest, as, we think, not to require further exposition for the purposes of a petition for certiorari.[30] But apart from the palpable error of the Court of Appeals, in accepting evidence of propensity as competent to show intent, the political evidence which permeates this record came in in a manner in conflict with settled principles and decisions of this Court.

Misapplication of the Haupt Decision

In Haupt's treason trial, evidence of statements that "after the war he intended to return to Germany, that the

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[30] The error is the more perplexing in the light of the realities involved in the case tried below. "Intent" was not an issue presenting difficulty to the prosecution if the acts charged had been proved by substantial evidence. Espionage is a crime of the sort where it is difficult to conceive of a factual situation where the intent to aid a foreign country could not be inferred from participation in the transmission of secret information to it. The political evidence ostensibly offered to show intent had preponderantly a prejudicial purpose.

United States was going to be defeated, that he would never permit his boy to join the American army, that he would kill his son before he would send him to fight Germany" (330 U. S. at p. 642) and that if war came and he were taken into the Army, "he would crawl over to the enemy lines and tell them our position" (152 F. (2d) 791-2) were "admissible on the question of intent and adherence to the enemy" (330 U. S. at p. 642).

The prosecutor offered (R. 414), and the trial judge accepted, as did the Court of Appeals, this Court's decision in *Haupt* as justifying admission of the sort of testimony given against this petitioner. But there is a vast difference between Haupt's statements, and petitioner's, as testified to by Elitcher (R. 226, 227, 229). (See p. 8, *supra*.) If the "worst" that can be said about petitioner's alleged period of membership in the Communist Party was that he urged political support of the German-Soviet non-aggression pact (a matter of public controversy on which reasonable men could differ) [31] does not the case come within the cautionary admonition of this Court in *Haupt:* "Such testimony is to be scrutinized with care to be certain the statements are not expressions of mere lawful and permissible difference of opinion with our government or quite proper appreciation of the land of birth." So far did the trial judge disregard this admonition, that the prosecution was permitted, in respect of a co-defendant, to introduce a collection can marked "Save a Spanish Republican Child" (R. 1177).

If the result below is left undisturbed, a sanction of a most ominous character (as well as retrospective retribution of a repugnant sort) will be allowed in respect of ex-

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[31] David Lloyd George (N. Y. Times Oct. 22, 1939, P. 35), Ambassador Davies' Mission to Moscow, (1941, pp. 453-6) and Mr. Henry Luce's Life Magazine (Vol. 14, No. 13, P. 20) expressed views not dissimilar to petitioner's.

pressions of opinion and lawful activity tinged with a left wing character—or which may have happened to coincide with opinion and activity of a left wing character. It does not require a multiplicity of "spy trials" and death sentences to have the effect—a calculated effect, perhaps—of helping to impose right wing orthodoxy of thought, opinion and political action on men apprehensive that evidence of non-conformity will be employed as evidence of disposition (and "hence" intention) to commit espionage.

Bentley: "Res Inter Alios Acta"

The question of logical relevance—which the Court of Appeals answered in terms of propensity—was confused by the trial judge with the question of circumstantial connection. The former question is for the judge to decide; only the latter for the jury. The question whether the purported evidence of "intent" was logically relevant to a material issue depends on whether the evidence did in fact "relate to an occasion which is near enough in kind to be rationally probative," *United States* v. *Walker*, 176 F. (2d) 564, 566; "The judge must decide each time whether the other instance or instances form a basis for sound inference as to the guilty knowledge of the accused in the transaction under inquiry" *United States* v. *Brand*, 79 F. (2d) 605, 606. But here, instead of excluding the evidence of Communist Party membership on the ground that he himself perceived no relation between it and any issue in the case (he was unable to say that he saw any (R. 199-200)), the judge decided to delegate the question to the jury and thereby invited the testimony of Bentley.

The ancient phrase "res inter alios acta" could not be better illustrated than by what then occurred. Three defendants, on trial for their lives, were forced to sit through a recital by an individual whom they did not know of

stupendous misconduct in which they had no part. The confusion was confounded by the fact that the narrator was a notorious public figure who "has made her accusations so lavishly". Were petitioner's counsel obliged to face the dilemma of either allowing her tale to go unrefuted or turning the trial into a three ring circus in an effort to refute it? Would defense counsel have been permitted—if they dared—to assume the defense of Bentley's "twenty" or "thirty" sources?

There could not have been a better demonstration of why the question of admissibility should, in this case above all, have been decided by the judge and by him alone. If he felt it necessary—and if it is ever permissible—to get expert opinion on the question of logical relevance, it should have been done in the absence of the jury. An exclusionary rule and policy prompted by the necessity of keeping from the jury information as to matters which would sway the jurors too much is destroyed altogether if the jury itself is to pass upon whether the exclusionary rule should be applied, or whether there is sufficient logical relevance shown to overcome it.

Association and Imputation

Bentley did not furnish information from which the tribunal could determine what was the "intent" of the perhaps one hundred thousand Americans who may have joined the Communist Party at one time or another for periods of varying duration. She did not even show that her own intention was to confer a military advantage on the Soviet Union—yet that was the statutory intent in proof of which her evidence went to the jury (R. 1558). She testified to "facts" (if her melange of gossip, rumor and hearsay may be so dignified) [33] which might support the inference that

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[32] Book Review—New York Times, Sept. 23, 1951.

[33] I.E. Would her testimony that the Party was part of the Communist International after its disaffiliation, and that body's dissolution, (R. 976-7,

some members of the Party might have had a disposition to aid the Soviet Union. But could such evidence be binding upon or even admissible against one such as petitioner, who was not shown to have acquiesced in, nor even to have any knowledge of, the characteristics of party membership as she described them?

The intent, the purpose, the state of mind of the many different individuals who joined the Communist Party was as variable as their own character and background. Some may have joined because it called meetings to support labor's claims (*cf. DeJonge* v. *Oregon*, 299 U. S. 353), others because of racial discrimination and oppression (*cf. Herndon* v. *Lowry*, 301 U. S. 242). Others may have joined because of a belief that in so doing they would combat fascism most effectively, or because of acceptance of a socialist ideal, or even because they viewed the Party as an effective instrument of social reform. In some instances, adherence may not have been a response to the Party's propaganda, emotional disturbance, sibling rivalry, and similar factors are said to have led some to join. See, *e.g.*, discussion at New York Herald Tribune Forum, "Why Do Americans Become Communists", Oct. 28, 1951, Section 9, pp. 50 ff.

The "intent" which was sought to be established was of course something personal to petitioner. "Guilt with us remains individual and personal even as respects conspiracies," *Kotteakos* v. *United States*, *supra* at p. 772. Is this less true of guilty intent? If "under our traditions beliefs are personal and not a matter of mere association," *Schneiderman* v. *United States*, 320 U. S. 118, 136, Bentley's testimony was not admissible against petitioner. And see *Knauer* v. *United States*, 328 U. S. 654, 669.

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983 (I) have been admissible in a prosecution for failure to register under the Foreign Agents Registration Act? 22 U.S.C. 611, *et seq.* There has been no such prosecution despite her availability.

III. Other Evidentiary Rulings of General Importance

Improper Use of So-called "Flight" Evidence

Obviously, the presence of a defendant at a place outside the jurisdiction of the court is not, without more, evidence of flight. There must be a basis for inference of a purpose to evade arrest or questioning before it can become a rational inference that his presence elsewhere indicates consciousness of guilt. The Court below, however, admitted evidence of petitioner's trip to Mexico, without requiring proof of guilty motive for departure. It did not, moreover, in instructing the jury, permit them to regard petitioner's trip as other than "evidence of flight" (R. 1559-60).

The vice of the procedure followed at the trial has been recognized by the New York Court of Appeals:

> "Flight from justice may be indicative of consciousness of guilt, but departure from the State is not always dictated by impulse or purpose to escape the consequence of acts done or charges that may be brought . . . guilty motive for the departure must be present before the departure can become a relevant factor in the determination of guilt." *People v. Stillman*, 244 N. Y. 196, 199.

Government counsel stated below, with respect to our point concerning the necessity for proof of guilty motive for departure, "we know of no such doctrine in the federal courts" (Gov't Br., C. A., p. 28). Their brief was dated Jan. 5, 1952. Yet Hon. Sylvester Ryan, United States District Judge for the Southern District of New York, wrote on December 19, 1951, in a case in which two of the Assistant United States Attorneys who signed the brief below were of counsel: "evidence of flight is 'ordinarily of slight value, and of none whatever unless there are facts pointing to the motive which prompted it' "; *United States v. Hall*, 101 F. Supp. 666, 672.

Improper Introduction of the "Deported" Card

1. In the popular mind "deportation" is commonly understood to mean "the sending back of an undesirable or criminal alien to the country whence he came."[34] There was no purpose for the introduction of the "deported from Mexico" card against petitioner, save to arouse the suspicion against him that he had engaged in criminal or immoral conduct in Mexico. No ground of relevance was stated. The afterthought accepted by the Court of Appeals (to rebut a claim of voluntary return) cannot justify admission of the card, since it was never stated at the trial or so given to the jury.

2. The card was in any case inadmissible as hearsay, not entitled to the dignity of a "business entry" (28 U. S. C. 1732). The entrant was present to testify and admitted on *voir dire* that his source for the statement was *not* the Mexican authorities (R. 1027, 1028), *nor* any document (R. 1036), yet the source claimed for the entry was "observation" (R. 1027). Deportation is evidenced by an order or decree or official statement, not by conduct. Could one testify—or make an "entry"—stating that another was convicted of crime, merely from observing him enter a penitentiary? Cf. *Clainos* v. *United States*, 163 F. (2d) 593; see also, *United States* v. *Grayson*, 166 F. (2d) 863, 869, "The statute did not mean to make competent whatever the entrant picked up from random sources." Moreover, the entry was made *post motem litam* by a representative of the very agency that had custody of petitioner for purposes of this very trial (R. 1034, 1037). Cf. *Palmer* v. *Hoffman*, 318 U. S. 109.

3. The evil character of what transpired is compounded by the fact that the prosecutor must have known that there would have been a wholly false implication in any sugges-

[34] Funk and Wagnalls, New Standard Dictionary.

tion that it was necessary to "deport" petitioner in order to bring him here, or that he had refused to return voluntarily. The prosecutor knew (cf. R. 1030, 1031, 1034) that petitioner had been assaulted and forcibly taken to the border by or at the procurement of an agency sworn to protect his person from violation of law, without notice, warning, invitation to return, or request that he waive extradition; that is to say, without having been permitted to exercise his volition.

IV. The Absence of Substantial Evidence Against This Petitioner

The recital by the Court of Appeals of the evidence against petitioner contains a statement wholly unsupported by the record: "According to the government's witnesses, Sobell, a college classmate of Rosenberg's suggested to Rosenberg that Elitcher would be a good source of espionage information" (R. 1643; 195 F. (2d) at p. 589). No witness testified to this and the record affirmatively shows that it was pure surmise, conceded to be such by the United States Attorney in summation (R. 1532). The balance of Elitcher's story, excluding matter not initially admissible against petitioner [35] fails to support a verdict of guilty.

The question of the sufficiency of the evidence against petitioner is raised particularly by the peculiar character of Elitcher's testimony. We cannot argue here that he should not have been believed; we suggest that he testified to so little of substance, and so much by way of conclusion, that the case against petitioner never should have gone to the jury.

His testimony is permeated with a curious quality. It

[35] The Court of Appeals exaggerated the import of a statement, not admissible against petitioner, that he had been "helping" (R. 237). This the Court transmutes into "According to Julius he regularly delivered information for transmittal to Russia." (R. 1643; 195 F. (2d) at p. 589.)

is a quality of conclusory condemnation that betokens not the Anglo-American development of facts by interrogation, but the shortcut to guilt employed in a propaganda trial. Early in his direct examination, the following question and answer appeared, the very first relating to petitioner's culpability:

> "Q. Now at this time in 1947, when you visited this Reeves plant where Sobell was employed, did you have a conversation with him or did he have a conversation with you regarding Soviet espionage?
> A. Yes" (R. 210).

This method of using a witness as a sort of rubber stamp, a one-man congregation who supplies no facts but says "amen," is quite consistent with the use of a nominally judicial proceeding to achieve a political objective. But it is not consistent with a search for truth to by-pass facts in favor of conclusions.

Stripped of the wholly conclusory references to the "espionage business" the testimony against petitioner is of a scientist making innocuous inquiries of a fellow-scientist. It is only by the witness' prior acquiescence to the prosecutor's lead, and his "impression" that it had to do with the "espionage business" that what was in itself meaningless becomes damning. To this is added an incident of an abnormal character—the late evening ride to the Rosenberg apartment with a can, said by Elitcher to have been said by Sobell, to contain "valuable information." It is significant that this single equivocal incident was not mentioned by Elitcher the first time he testified before the Grand Jury (R. 341). Despite the fact that he had consulted a lawyer and "decided I would tell the whole complete story" (R. 339, 295) it was not part of the story he told the special agents of the F. B. I. (R. 331) during his first, ten-hour (R. 388-9) interrogation.

The story is full of incongruous details and circumstances and bears earmarks of having been invented. In any case, what did it mean? Proof was required to be made beyond a reasonable doubt of petitioner's participation in (1) an agreement to transmit secret information, (2) relating to the national defense, (3) to the U. S. S. R. or an agent thereof, (4) with intent and reason to believe that it would be used to its advantage.

Speculation cannot supply the place of proof. *Moore* v. *Ches. & Ohio R. Co.*, 340 U. S. 573, 578. The number of inferences and assumptions that have to be made, in order to spell out the necessary ingredients of guilt is so great that the case should not have been permitted to go to the jury.

Although the Court of Appeals affirmed the conviction, a passage in its opinion virtually confirms our point. In discussing the evidence, the opinion states that if the testimony of the "self-confessed spies" were disregarded, "the conviction could not stand" (R. 1648; 195 F. (2d) at p. 592). The self-confessed spies referred to at this point were the Greenglasses; the only others who testified were Gold, and perhaps Bentley. None of these gave any evidence connecting petitioner with a conspiracy. To say that the conviction could not stand, if based on the testimony of Elitcher plus all other non-spies is to say that petitioner's conviction was not supported by evidence sufficient to withstand appellate review. Even if, in this passage, the Court was addressing itself only to the evidence against the Rosenbergs, the result is the same: If Rosenberg's conviction "could not stand" on Elitcher's flimsy story, how could this petitioner's?

V. Reliance on Certain Points More Fully Discussed in the Petition in No. 111, This Term

Evasion of the Treason Clause of the Constitution

The question of the effect of the employment by prosecutor and judge alike of the characterization of "treason" as describing the offense with which defendants were charged is one as to which petitioner takes a joint position with his co-defendants, who will be petitioners herein in No. 111, this Term. Petitioner, in the interests of brevity and convenience, respectfully begs leave to incorporate herein, and rely upon the discussion of such point in that petition (No. 3 of "Questions Presented" in that petition, discussed at pages 27-30 therein).

Its availability to petitioner is the more striking in that but a single witness, Elitcher, testified against petitioner, with respect to any conceivable event which might be regarded as an "overt act." Moreover, none of the overt acts charged in the indictment relate to conduct of this petitioner, or refer to him.

Effect of the Trial Judge's Conduct

As stated above, p. 10, note 6, this petitioner takes a joint position with his co-defendants, petitioners here in No. 111, this Term, on the claim of prejudicial misconduct of the trial judge, and joins in the appendix to their petition particularizing such conduct as well as the portion of their petition discussing it (No. 4 of "Questions Presented" in that petition, discussed at pages 31-39 therein).

Constitutionality of the Statute and Sufficiency of the Indictment

The question as to the constitutionality of the statute under which the indictment was drawn, and the validity of the indictment under the statute as construed, is one on which petitioner takes a joint position with his co-defend-

ants who will be petitioners herein No. 111, this Term. Petitioner, in the interests of brevity and convenience, respectfully begs leave to incorporate herein, and rely upon the discussion of such point in that petition (Nos. 1 and 2 of "Questions Presented" in that petition, discussed at pages 19-27 therein).

VI. Kidnaping and the Motion in Arrest

This Court has, subsequent to the decision below, adhered, in *Frisbie* v. *Collins*, 342 U. S. 519 (March 10, 1952), to the doctrine of *Ker* v. *Illinois*, 119 U. S. 436. It did not have occasion, however, to pass upon the question left open by the *Ker* case, and which it has never decided, as to the effect of kidnaping from a foreign country by Federal officials, or at their instigation for the purpose of trial in a *federal* court.

It is particularly when, as claimed here, such kidnaping may have been in violation of international law, that questions are presented for a national tribunal which are not answered by *Frisbie*. Completely different considerations apply to international rendition, as distinguished from interstate rendition, *Lascelles* v. *Georgia*, 148 U. S. 537, 542-3. The dictum that a court will not be concerned with how a defendant is brought before it is hence belied by *United States* v. *Rauscher*, 119 U. S. 407 (trial after extradition on a different offense than that named in warrant) and *Cook* v. *United States*, 288 U. S. 102 (failure of jurisdiction when seizure is in violation of international law).

The facts claimed involve violations of the United States Code, because as the United States Attorney said, "The F.B.I. caught up with him and brought him back and you have him here" (R. 1534). Correspondence with foreign nations and "matters respecting foreign affairs" are entrusted to the State Department, 5 U. S. C., Sec. 156; others who communicate with a foreign government to influence its conduct in a matter that may be the subject of dispute or

controversy with this country are guilty of a felony, 18 U. S. C., Sec. 983. The procurement of the return of individuals, whether by right, under extradition treaties, or as a favor, independent of such treaties, is a part of the subject matter of "friendly international relationships." *Factor* v. *Laubenheimer*, 290 U. S. 276, 298.

The powers of arrest of agents of the F.B.I. are confined to our territory by a rule of construction, required by international law. If a hearing were to disclose either that they invaded Mexico as the literal meaning of the prosecutor's statement (R. 1534) would imply or that Mexican individuals (or officials) acted on their behalf in beating and kidnaping petitioner, there was a violation of Mexican territorial sovereignty by their conduct.

The result would be an absence of power, *ab initio*, and could not be ratified by service of process after petitioner's arrival here, *Cook* v. *United States, supra*.

Apart from the violation of Mexican sovereignty, there was lawless usurpation of the foreign affairs functions entrusted to the State Department, on the facts indicated in this record. The *Ker* case left open a question that should, in the light of *McNabb* v. *United States*, 318 U. S. 332, be answered differently in respect of the responsibility of this Court for administration of federal criminal justice, a responsibility for maintaining "civilized standards of procedure." Consideration of self-limiting policy in reviewing *state action* (*cf. Ker* and *Frisbie*) are "wholly irrelevant to the formulation and application of proper standards for the enforcement of the federal criminal law in the federal courts" (318 U. S. at pp. 340, 341).

The Court of Appeals declined to decide the point (R. 1668; 195 F. (2d) at pp. 602-3). Instead it held that it had been "waived" by the petitioner. Such a harsh result is not understandable in view of petitioner's reliance, in the form of procedure employed—motion in arrest of judgment—on

United States v. *Rauscher, supra.* And the Court did not attempt to reconcile its decision with this Court's holding in *Cook* that an objection of want of jurisdiction based on the violation of international law there involved was not "lost by entry of an answer to the merits" (288 U. S. at p. 122).

Conclusion

It is respectfully prayed that this petition for a writ of certiorari to review the judgment of the court below should be granted.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG AND ETHEL ROSENBERG, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 112

MORTON SOBELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions in the Court of Appeals (R. 1640-1682, 1709-1713) are reported at 195 F. 2d 583.

JURISDICTION

The judgments of the Court of Appeals were entered on February 25, 1952 (R. 1682-1683), and petitions for rehearing (R. 1683-1708) were denied on April 8, 1952 (R. 1713-1714). On April 30, 1952, Mr. Justice Jackson extended the time for filing petitions for writs of certiorari to June 7, 1952 (R. 1714-1715), and the petitions were filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether Sections 2(a) and 4 of the Espionage Act of 1917 are so vague and indefinite as to violate petitioners' rights under the First and Fifth Amendments.

2. Whether the indictment is insufficient for failure to allege that the information the alleged conspirators conspired to pass was secret.

3. Whether references by the prosecutor in his arguments and the trial court in its charge to traitors and treasonable conduct so confused the nature of the charge against petitioners with treason as to deprive them of a fair trial.

4. Whether the record shows that conduct of the trial judge deprived petitioners of a fair trial in violation of the Fifth and Sixth Amendments,

(a) by a course of conduct displaying bias against petitioners and conveying to the jury his belief in their guilt;

(b) by stating to the jury, in the course of his

instructions, that the existence of an international state of tension made "the enforcement of the espionage laws [take] on a new significance";

(c) by failing, in the course of reviewing the evidence, to state the grounds for attack by petitioners on the credibility of certain witnesses, although he did in fact refer to their possible bias;

(d) by failing to have read to the jury certain testimony which they did not request.

5. Whether admission of the following evidence deprived petitioners of their rights under the First, Fifth and Sixth Amendments:

(a) statements by petitioners indicating preference for the Soviet Union, to establish their intent;

(b) evidence tending to show (1) membership in the Communist Party, and (2) the obligation to aid the Soviet Union arising from such membership, again to establish petitioners' intent;

(c) evidence tending to show the connection between other persons in the Soviet spy network and Julius Rosenberg, to corroborate details of the stories of witnesses whose testimony was already properly in evidence.

6. Whether a government rebuttal witness should have been excluded under 18 U.S.C. 3432 because his name was not included on the list of witnesses required by that section.

7. Whether the imposition of the death sentence on the petitioners Julius and Ethel Rosenberg is "cruel and unusual" punishment in violation of the Eighth Amendment.

8. Whether any irregularities in Sobell's arrest in and expulsion from Mexico affected the jurisdiction of the trial court where the question was raised for the first time after the return of the verdict against him.

9. (a) Whether Sobell was shown by substantial evidence to have participated in a single conspiracy with all of the co-defendants as charged in the indictment, and (b) whether this issue was properly submitted to the jury.

10. Whether the admission in evidence against Sobell of certain testimony tending to show that he went to Mexico to avoid arrest deprived him of a fair trial.

STATUTE INVOLVED

The Espionage Act of 1917, 40 Stat. 217, 218, 219, 50 U.S.C. 32, 34, provided in relevant part:[1]

> Section 2.
>
> (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen

[1] These sections were repealed by Section 21 of the Act of June 25, 1948, 62 Stat. 683, revising the Criminal Code, and were reenacted in substantially the same terms as Section 794 of the Code.

thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided,* That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years * * *.

* * * * *

Section 4.

If two or more persons conspire to violate the provisions of sections two or three of this title and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine.

STATEMENT

On January 31, 1951, a grand jury of the United States District Court for the Southern District of New York returned an indictment charging that (R. 2):

* * * On or about June 6, 1944, up to and

> including June 16, 1950, * * * Julius Rosenberg, Ethel Rosenberg, Anatoli A. Yakovlev, also known as "John," David Greenglass and Morton Sobell, the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold and Ruth Greenglass, named as co-conspirators but not as defendants, and with divers others presently to the Grand Jury unknown, to violate sub-section (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States of America.

The remainder of the indictment listed 12 overt acts alleged to have been committed in furtherance of the conspiracy between June 6, 1944, and January 14, 1945 (R. 3-4). All of the petitioners pleaded not guilty (R. 27, 28, 30). Before trial, they challenged the constitutionality of the Espionage Act and the sufficiency of the indictment. Their motions were denied (R. 160-173).

At the trial, witnesses for the Government testified to the following:

Defendant David Greenglass, who entered a plea of guilty and testified on behalf of the Government, was, in November 1944, a soldier in the United States Army, working as a machinist at the atomic experimental project at Los Alamos, New Mexico (R. 398-399). At that time, Ruth Greenglass, his wife, was about to make a trip from her home in New York to see her husband (R. 422, 678). Shortly before she left, Ruth visited the petitioners Ethel and Julius Rosenberg, who were, respectively, the sister and brother-in-law of David (R. 423, 678). On this occasion, Julius told Ruth that he and Ethel had not been so active in the Communist Party of late because he had been trying to help the Russians more directly than by membership in the Party (R. 423-424, 679). Julius went on to tell Ruth that David was working on the atomic bomb (R. 424, 679). He stated that the bomb had tremendous destructive effect and that the United States and Britain were working jointly on its development (R. 679); and further, that "he felt that the information should be shared with Russia * * * because if all nations had the information then one nation couldn't use the bomb as a threat against another" (R. 679). He wanted Ruth "to tell * * * David that he should give information to Julius to be passed on to the Russians" (R. 679). On Ruth's initial demurrer, Ethel encouraged her at least to tell David what Julius wanted so that David could decide for himself, stating also that "this was right for David" (R. 424-425, 679-680).

Pursuant to this conversation, Ruth did make the request of David on her visit to him, and, after initial hesitation (R. 425), David furnished to Ruth information relating to the location of the project, its security measures, and the names of certain of its personnel (R. 426-427, 683-684), all of which information was secret (R. 406-408, 410-411, 427, 468, 890, 901-902), and all of which David knew was not supposed to be transmitted (R. 406-408, 427). Ruth gave this information to Julius on her return to New York (R. 685).

Later, on trips to New York on furlough in January and September of 1945, David passed further information to Julius. The information passed in January included "a list of people who seemed sympathetic with Communism and would help furnish information to the Russians" (R. 438), a full written report of what David knew of the experiments conducted at Los Alamos, sketches of high explosive lenses, lens molds, and descriptive material relating to these sketches (R. 428-429, 438-439, 686). David's handwritten report containing this information was typed by Ethel (R. 443, 687, 691).[2] In September, David wrote up and delivered to Julius approximately 12 pages of data, which included a descriptive material concerning the atom bomb and its component parts, a sketch of a cross-section of the assembled bomb,

[2] While David was in New York on this trip, Julius also arranged for him to meet a person whom Julius described to David as a Russian, who questioned David about high explosive lenses, their curvature, and means of detonation (R. 432-434).

as well as some scientists' names and possible recruits for espionage (R. 495-500, 702-705; Ex. 8).[3] Again, Ethel typed the data (R. 513, 704).

In addition to passing data to Julius directly, David on one occasion, and pursuant to Julius' arrangements, passed data to Harry Gold (R. 459, 701). At the time of David's January 1945 trip to New York, a signal arrangement had been made between the Greenglasses and the Rosenbergs so that information could be obtained from the Greenglasses while they were in New Mexico (R. 446-447, 689-690). Julius had cut off the side of a Jello box and cut it in two in an irregular fashion. One half he gave to Ruth, the other half he kept, stating: "This half will be brought to you by another party and he will bear the greetings from me and you will know that I have sent him" (R. 689; Ex. 4B). In June 1945, Harry Gold appeared at the Greenglasses' Albuquerque, New Mexico, apartment with greetings from "Julius" and identified himself with the piece of the Jello box the Greenglasses had last seen in Julius' hand (R. 455-457, 699-700). David gave Gold a report containing sketches of the lens mold used in the atom bomb, together with descriptive material and a list of possible recruits for Soviet espionage (R. 459, 701). David also reported that a test explo-

[3] It should be noted that Julius had in January given David a general description of the atom bomb to facilitate the latter's quest for additional information (R. 491, 493-494). This bomb was the type later dropped on Hiroshima, Japan (R. 493-494). However, the bomb which David described to Julius in September 1945 was an improved type which was subsequently dropped on Nagasaki, Japan (R. 495, 910-912).

sion was to be conducted at Alamogordo, New Mexico, in July 1945 (R. 520).

According to Gold's testimony, he was given this Greenglass assignment and the Jello-box identification by the defendant Anatoli Yakovlev (R. 822), who was a citizen of the Soviet Union employed in the Soviet Consulate in New York (R. 845-847) and to whom Gold delivered the data.[4]

Testimony was introduced to show that the data delivered to Gold, as well as the other scientific data passed directly to Julius, were secret and valuable, and that scientists with knowledge of the general field could determine from the data furnished the important principles that were involved (R. 470-479).

At the time of David's September 1945 furlough, it appeared that he would soon be discharged from the Army. Julius urged him to remain at Los Alamos in a civilian capacity, if he could, in order that he could continue to furnish information (R. 512, 707). However, David declined to do so and in 1946 returned to New York and entered a machine shop business with Julius and several others (R. 513-514, 708). At various times while David was working in the business, Julius told him that he wanted him to go to college to reestablish contacts he had made with scientists at Los Alamos and to make new contacts, that money was not a problem, and that whatever was neces-

[4] Gold also testified that Yakovlev subsequently told him that the data had been transferred to his superiors in the Soviet Union and that it was very useful (R. 831).

sary to make Ruth and David comfortable would be furnished by the Russians (R. 515-516, 708). Julius also stated that he had contacts in the General Electric Company at Schenectady, New York, and in Cleveland, who were furnishing him information (R. 516).

In February 1950, when the arrest of Klaus Fuchs was publicized, Julius went to David and told him that Fuchs' contact was the man who had got data from Ruth and David in June 1945; that Fuchs' arrest meant that the Greenglasses' activities would be discovered; and that therefore they would have to leave the country (R. 523). These warnings were renewed at the time of the arrest of Harry Gold (R. 525-526, 709) in May 1950. During that month, Julius gave David $1,000, and promised him more, in order that David and Ruth might discharge their obligations and leave the country (R. 526, 710). In addition, he gave them specific and detailed instructions as to how to get to Mexico and ultimately to the Soviet Union (R. 526-530, 710).

Julius informed the Greenglasses that he and his wife also were going to flee and that they would meet the Greenglasses in Mexico (R. 529, 713). Rosenberg did, in fact, ascertain from his physician what inoculations were needed for a trip to Mexico (R. 851), and he had passport pictures taken of himself and his family (R. 1427-1429).

On May 30, 1950, in accordance with Julius' request, the Greenglasses had six sets of passport pictures taken, five of which they gave to Julius

(R. 530-531, 712). The sixth set was retained by Greenglass and introduced in evidence at the trial (R. 531, 712; Ex. 9A, 9B). A week later, Julius visited the Greenglasses' apartment and gave David $4,000 wrapped in brown paper (R. 532, 713; Ex. 10). He asked David to repeat the flight instructions, which David did (R. 532-533). David gave the $4,000 to his brother-in-law, Louis Abel, who, after David's arrest, turned it over to the latter's lawyer (R. 536, 713, 794-795).

Max Elitcher, who had been a classmate of the petitioner Morton Sobell in engineering at the City College of New York and who had later roomed with him in Washington, D. C., when both were working there, was, in June, 1944, employed in the Bureau of Ordnance of the Navy Department in Washington (R. 197). At that time, Rosenberg, who had known both Elitcher and Sobell at college, visited Washington and asked Elitcher whether he would contribute military information to be passed on to the Russians (R. 207). The request was prefaced with the observation that the war effort of the Soviet Union was being impeded because "some interests in the United States" were denying it the benefit of a good deal of military information (R. 207), and to counteract this, many people were furnishing the Soviet Union with classified information about military equipment (R. 207). Rosenberg assured Elitcher that any information he might contribute would be returned to him after it was microphotographed and that definite precautions would be taken to prevent the microfilm from fall-

ing into the wrong hands (R. 209-210). Apparently to reassure Elitcher further, Rosenberg stated that Sobell was among those furnishing information for transmission to Russia (R. 235-237).

A few months after this conversation, in September 1944, Elitcher and Sobell were vacationing together in West Virginia (R. 238-239). Elitcher told Sobell that Rosenberg had visited him, had requested him to supply military information for Russia, and had informed him that Sobell was a contributor (R. 239). At this point, Sobell became very angry, stating: "He should not have mentioned my name. He should not have told you that" (R. 239). Despite Elitcher's efforts to persuade Sobell that Rosenberg knew that they were close friends and therefore felt safe in confiding in Elitcher, Sobell's anger continued: "It makes no difference, he shouldn't have done it" (R. 239).

Although Elitcher visited Rosenberg in June 1945 (R. 239-240), when Rosenberg told of his dismissal as a civilian employee of the Army Signal Corps (see R. 1057-1058) because of his Communist Party Activities (R. 243), it does not appear that another request for data was made until September of that year. At that time, Rosenberg pointed out to Elitcher that, although the war was over, there was a continuing need for new military information for Russia (R. 243-244). Rosenberg asked Elitcher if he would contribute, and the latter replied he would let Rosenberg know (R. 244).

In the course of his duties with the Bureau of

Ordnance, Elitcher had occasion from time to time to visit the General Electric Plant in Schenectady, New York, where Sobell was then working (R. 244-245). On one of these visits, in the early part of 1946, Sobell sought from Elitcher an ordnance pamphlet on a fire-control system on which Elitcher was working (R. 245-247). The pamphlet was classified and not available for public use (R. 246). On another visit, later in 1946, Sobell again asked about the status of the ordnance pamphlet (R. 248). Upon being informed that the pamphlet was not yet completed, Sobell suggested that Elitcher see Rosenberg in regard to it (R. 248-249). Acting on this suggestion, Elitcher subsequently saw Rosenberg in New York City (R. 251-252). At that time, however, Rosenberg stated that he thought there had been a "leak" in his espionage set up and that he preferred Elitcher not to visit him until he was notified to do so (R. 252). He also told Elitcher to discontinue his Communist Party activities (R. 252).

In the latter part of 1947, Sobell shifted his employment from the General Electric Company in Schenectady to the Reeves Instrument Company in New York City (R. 253), continuing, however, to work on classified projects (R. 253). At about this time, Elitcher visited Reeves and saw Sobell. Sobell inquired whether Elitcher knew of any engineering students "who were progressive." Elitcher replied that he did not, but that if somebody came along, he would let Sobell know (R. 254). Elitcher then described to Sobell certain difficulties he was

having with his wife. Sobell immediately asked Elitcher whether she knew anything about "this espionage business" (R. 254-255). Elitcher said he thought she might know something but that he wasn't sure. Sobell replied, "Well, that isn't good" (R. 255).

In June 1948, Elitcher decided to leave the Bureau of Ordnance to take a job in New York (R. 256). When he informed Sobell of his plans, the latter urged him not to do anything until he discussed the matter with Rosenberg (R. 256).[5] Pursuant to arrangements made by Sobell, Elitcher met Rosenberg and Sobell in midtown New York (R. 256-257). When Rosenberg was told about Elitcher's plans, he tried to persuade Elitcher to remain in Washington, stating that he needed a source of information in the Navy Department (R. 257). Rosenberg further stated that he had already made plans for Elitcher to meet a contact in Washington (R. 257). During this conversation, Sobell also attempted to persuade Elitcher to stay at the Bureau of Ordnance; he told Elitcher, "Well, Rosenberg is right, Julie is right; you should do that" (R. 257).[6]

Sobell then left and Elitcher had dinner with Rosenberg (R. 257). During the course of dinner, Rosenberg said that money could be made available for the purpose of sending Elitcher to school to

[5] Elitcher testified that Sobell said, "Don't do anything before you see me. I want to talk to you about it, and Rosenberg also wants to speak to you about it" (R. 256).

[6] Elitcher, nonetheless, did not change his mind, and shortly afterwards changed his employment (R. 257, 255).

improve his technical status (R. 258). Elitcher asked Rosenberg how he had got "started in this venture" (R. 258). Rosenberg replied that a long time ago he had decided that this was what he wanted to do; that he made it a point to get close to people in the Communist Party and kept getting from one person to another until he finally succeeded in approaching a Russian "who would listen to his proposition concerning this matter of getting information to Russia" (R. 258).

A month later, in July 1948, Elitcher drove with his family from Washington, D.C., to New York City, preparatory to changing his job (R. 259). On the way, he noticed that he was being followed (R. 259-260). Upon his arrival in New York, he proceeded to Sobell's home, where he planned to stay overnight (R. 259). When Elitcher told Sobell of his fear that he had been followed, Sobell became angry and said that Elitcher should not have come to his house; that he had some valuable information in the house that he should have given Rosenberg some time ago, information that was "too valuable to be destroyed and yet too dangerous to keep around" (R. 260-261). Over Elitcher's protests, Sobell insisted the information be delivered to Rosenberg that night. Sobell then took a 35 millimeter film can from his house, and, accompanied by Elitcher, drove to Manhattan. While Elitcher waited in the car, Sobell left to deliver the can to Rosenberg. When Sobell returned, Elitcher asked him what Rosenberg thought about his being followed (R. 261). Sobell replied that Rosenberg said

that he had "once talked to Elizabeth Bentley on the phone but he was pretty sure she didn't know who he was and therefore everything was all right" (R. 261). The two then returned to Sobell's house (R. 261).

Subsequently, in October 1948, Elitcher moved to New York and took a job with the Reeves Instrument Company, where Sobell was working (R. 253, 255). One night, while returning from work, Sobell again asked Elitcher whether he knew any engineering students who would be likely sources of military information. This time, however, Sobell stated that he wanted students who were not involved in any progressive activities "so that they would not be suspected" (R. 255). Again, Elitcher replied that he did not know any (R. 255-256).

In June 1950, Sobell and his family went to Mexico in a manner which parallelled Rosenberg's instructions to Greenglass. For a time, they lived in Mexico City (R. 920-921). There, Sobell asked a neighbor, one Rios, whether he knew of a way one could leave Mexico without having his papers in order. He told Rios that he was worried because the military police were on the lookout for him to take him back into the United States Army, and that he was afraid to return to the Army because he had already experienced one war (R. 922-923). He then asked Rios for instructions on how to go to Vera Cruz, the leading seaport in Mexico (R. 923). The statement by Sobell that the military police were looking for him was untrue. Sobell had not served in the Army during the war but had at all

times been in a deferred classification (R. 964).

While away from Mexico City, Sobell sent two letters to his wife, addressed, however, to his neighbor, Rios, one postmarked from Vera Cruz, the other from Tampico, the second largest seaport in Mexico (R. 924-926). In his travels to these seaports and return to Mexico City, Sobell used at least five different aliases (R. 928, 931, 933, 936, 937-938). He also sent two letters from Mexico City, bearing fictitious return names and addresses, to relatives in the United States through a friend in New York City (R. 863-867). Sobell was ultimately apprehended by the Mexican police and expelled from Mexico (R. 1024-1031).

In addition to testimony showing this chronology of events, the Government introduced the testimony of Elizabeth Bentley to show the character of the Communist Party as a subject organ of the Communist International (R. 976-977), which had its headquarters in, and "only served the interests of," Moscow (R. 978, 983, 984).

In addition, she testified that on the basis of long and varied experience in the Party, membership required either obedience to the Party and to the interests of Moscow or expulsion (R. 979, 983).[7]

It was shown that Sobell had been a member of the Party at least from 1939 to 1941 (R. 223-224, 229); that he had recruited Elitcher into the Party (R. 203-204, 224); that he had for some time dur-

[7] She was thoroughly cross-examined on the adequacy of her knowledge to make this statement (R. 996-1016, 1013-1022).

ing that period been chairman of his Party unit and, as such, had, among other things, instructed its members to gather support for the Hitler-Stalin pact and for Russia generally and to infiltrate certain organizations (R. 225-227).

The testimony of Ruth and David Greenglass relating to the Rosenbergs' efforts to recruit them for espionage showed that the Rosenbergs, also, had been members of the Party (R. 423-424, 679). Rosenberg had also stated to Elitcher that he had been a member of the Party (R. 258; *supra*, p. 15).

At the close of the trial, Sobell moved for acquittal on the ground that, at best, two conspiracies had been proved, and that he was shown to have participated in only one of them; and that his trial together with alleged atomic spies was irremediably prejudicial (R. 1443-1445). All of the petitioners renewed their challenges to the constitutionality of the statute and the sufficiency of the indictment (R. 1441-1442). In addition, the Rosenbergs raised the further contention that the attitude and conduct of the trial court throughout the trial had made a fair judgment impossible (R. 1442-1443), and they asked for a mistrial. The various motions were denied.

The jury returned verdicts of guilty (R. 1579). Petitioners thereupon moved for new trials and in arrest of judgment, urging allegedly erroneous trial rulings and their earlier challenges to the statute and indictment (R. 1586-1587). At this time, Sobell, for the first time, challenged the jurisdiction of the court on the ground that he was

brought back from Mexico forcibly (R. 1587-1589). The motions were denied.

The court sentenced petitioners Julius and Ethel Rosenberg to death (R. 27-29, 1616) and petitioner Sobell to 30 years' imprisonment (R. 30, 1620). On appeal, the judgments of conviction were affirmed (R. 1682-1683), unanimously as to the Rosenbergs, but with Judge Frank dissenting as to Sobell (R. 1640-1682).

ARGUMENT

1. Petitioners' first contention, that the statute under which they were convicted is invalid under the First and Fifth Amendments (No. 111, Pet. 19-26; No. 112, Pet. 44-45), is plainly unsound. Petitioners do not contend that Congress may not constitutionally proscribe the transmission of military secrets to a foreign power, even though this plainly limits their freedom to speak and communicate about such matters. Nor do they contend that there is doubt whether their conduct is within the ambit of the statute. Their contention is simply that Congress, in proscribing the transmission of certain data, has failed to say with sufficient clarity just what kinds of data are meant.

But this contention was fully answered by this Court 12 years ago. In *Gorin* v. *United States*, 312 U. S. 19, the Court upheld this very same statute[8] against a contention that it violated the Fifth Amendment because it failed to define with suffi-

[8] It also dealt with section 1(b) of the Espionage Act of 1917, in addition to the section involved here.

cient definiteness the kinds of information included within its proscriptions. Speaking for a unanimous Court, Mr. Justice Reed said (312 U. S. at 27-28):

> * * * [W]e find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law. The obvious delimiting words in the statute are those requiring "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation." This requires those prosecuted to have acted in bad faith. The sanctions apply only when *scienter* is established. Where there is no occasion for secrecy, as with reports relating to national defense, published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign government. Finally, we are of the view that the use of the words "national defense" has given them, as here employed, a well understood connotation. They were used in the Defense Secrets Act of 1911. The traditional concept of war as a struggle between nations is not changed by the intensity of support given to the armed forces by civilians or the extension of the combat area. National defense, the Government maintains, "is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness." We

> agree that the words "national defense" in the Espionage Act carry that meaning. Whether a document or report is covered by §§ 1 (b) or 2 (a) depends upon its relation to the national defense, as so defined, not upon its connection with places specified in § 1 (a). The language employed appears sufficiently definite to apprise the public of prohibited activities and is consonant with due process.

See also *United States* v. *Heine*, 151 F. 2d 813 (C.A. 2), certiorari denied, 328 U. S. 833, where the Court of Appeals for the Second Circuit construed the language, "relating to the national defense", to exclude information made public by Congress or the military departments, and, as thus construed, tacitly recognized its constitutionality.

Although a challenge under the First Amendment to an allegedly vague statute may in some situations raise a different problem than a challenge under the Fifth Amendment (but cf. *Dennis* v. *United States*, 341 U. S. 494, 515-516), no such issue is involved here. For the established construction that the statute is applicable only where *scienter* is established, where the data relate to national defense, and where they are secret, surely precludes a contention that the statute impinges upon freedom of communication. The First Amendment cannot be invoked as a shelter for espionage. Cf. *Chandler* v. *United States*, 171 F. 2d 921, 938-939 (C.A. 1), certiorari denied, 336 U. S. 918, and page 23 of the *Gorin* opinion, where, in discussing the petitioners' contentions, the Court adverted to their reliance

"upon the traditional freedom of discussion of matters connected with national defense which is permitted in this country." See also *United States* v. *Heine, supra,* at 815.

2. Petitioners next contend that the indictment was insufficient because it did not allege that the data which they conspired to pass were secret (No. 111, Pet. 26-27; No. 112, Pet. 44-45). The allegation was not necessary. It has been held that Section 2 of the Espionage Act of 1917 does not cover non-secret data. *United States* v. *Heine, supra;* cf. *Gorin* v. *United States, supra.* This reading was drawn from the language and context of the section. An indictment framed, as the present one, essentially in the language of the section sufficiently indicates the element of secrecy. Compare *Hagner* v. *United States,* 285 U. S. 427; see also *Rose* v. *United States,* 149 F. 2d 755, 758 (C.A. 9).

The indictment was sufficient to enable petitioners to understand the nature of the charge against them and to prepare their defenses. [redacted] It certainly cannot be argued that petitioners were prejudiced during trial, for the argument on their motions to dismiss the indictment shows that their counsel were cognizant of the strictures of the *Heine* decision and based their motions, in this respect, upon that decision (R. 170-171). Finally, it is clear that the indictment was sufficient to enable them to plead the judgment in bar of another prosecution should occasion to do so arise. Cf. *United States* v.

Josephson, 165 F. 2d 82, 85 (C.A. 2), certiorari denied, 333 U. S. 838; *Carter* v. *United States*, 173 F. 2d 684, 685 (C.A. 10) certiorari denied, 337 U. S. 946; *Robertson* v. *United States*, 168 F. 2d 294 (C.A. 5) (holding that an omission from an indictment, though improper, was not prejudicial).

3. Petitioners advance numerous reasons why their trial was unfairly conducted. They first urge that the prosecution and the trial judge "poisoned" their trial by making and permitting references to "treason" and "traitorous" and "disloyalty" in speaking of petitioners, thereby subjecting them to the prejudicial passions aroused by a treason charge, without according them the protection of the two-witness rule. Consequently, they conclude, their conviction was in violation of the mandate of the treason clause of the Constitution (No. 111, Pet. 27-30; No. 112, Pet. 44).

This contention seems to have been suggested for the first time in the Rosenbergs' petition for rehearing in the Court of Appeals (R. 1697).[9] There were no objections at the time the statements were made.

But this aside, the "poison" allegedly introduced cannot have been very noxious. Petitioners have called attention, in all, to some 18 sentences in the record (No. 111, Pet. 29-30). Eight of these were

[9] In their petition for rehearing in the Court of Appeals (R. 1697-1700), the Rosenbergs seem to have argued, also for the first time, that as construed and applied by the Court of Appeals the Espionage Act permits punishment for acts that meet the constitutional definition of treason, but without its safeguards, and is therefore itself unconstitutional (R. 1697-1700), an argument which was rejected by that court (R. 1709-1713). That does not seem to be their present argument.

in the opening statement of the prosecutor (R. 180, 181, 182, 183, 184), and five in his closing statement (R. 1517, 1518, 1535). One was in the charge of the judge (R. 1550), and four in his statement at the time of sentencing the Rosenbergs (R. 1613, 1614, 1615).

In their contexts, it is clear that all that was meant by the references was that petitioners were not acting as loyal Americans would.[10] If they did what they were charged with, this can hardly be gainsaid. Moreover, the jury were warned often that what was said by counsel did not prove guilt (R. 1516, 1544, 1563). Even without such warning, the jury can be assumed to be capable of spotting

[10] A few examples of petitioners' references to the United States Attorney's opening are these:

"The evidence will show that the loyalty and allegiance of the Rosenbergs and Sobell were not to our country * * *" (R. 180).

"* * * the evidence will show that the primary allegiance of these defendants was not to our country * * *" (R. 181).

"The evidence will show their loyalty to and worship of the Soviet Union, and by their rank disloyalty to our country these defendants joined * * * in a * * * conspiracy to deliver to the Soviet Union, the information and the weapons which the Soviet Union could use to destroy us" (R. 181).

"These traitorous activities, this constant concern for recruiting Americans into this espionage ring, the clandestine delivery of secrets, stolen from our Government, to Soviet agents, through these defendants, continued through these years" (R. 183).

In his closing statement, the United States Attorney said, *inter alia*:

"These defendants * * * are parties to an agreement to spy and steal from their own country * * *. It [a foreign power] would use the produce of these defendants, the information received through them, from these traitors, to destroy Americans and the people of the United Nations" (R. 1535).

both the prosecutor's occasional rhetorical flourishes and the fact that "traitor" and "treasonous" have a looser, non-constitutional meaning that is quite appropriate in this case. See Webster's New International Dictionary (Merriam-Webster, 2d ed. 1951) pp. 2687, 2698.

The court's instructions, totalling 24 printed pages (R. 1542-1567), moreover, clearly explained the charge against petitioners (R. 1545-1548, 1550-1554). In the context of its length and substance, the one use of the word "traitors" (R. 1550) diminishes into trivial insignificance. The statements of the court on sentencing of which petitioners complain, which again were obviously rhetorical (R. 1613, 1614, 1615), could not have affected the quality of petitioners' trial.

4. (a) Petitioners next contend that they were deprived of a fair trial because the judge displayed bias against them and conveyed to the jury an impression of his belief in their guilt (No. 111, Pet. 31-35; No. 112, Pet. 44). The objection is not to particular rulings, but to aggregate and cumulative alleged misbehavior that reached "enormity" (No. 111, Pet. 33).

The trial judge overruled this objection, because it was made for the first time at the close of all the evidence in the form of a motion for a mistrial, because he did not believe it was made in good faith, and because he thought it was unfounded (R. 1442-1443). Cf. *Ochoa* v. *United States*, 167 F. 2d 341, 345 (C.A. 9). Although the misconduct, if any, under petitioners' theory, was the result of indi-

vidual accretions too small in themselves to support a motion for a mistrial, it is clear that the "enormity" of the judge's alleged misconduct must have become substantial enough to complain of long before the termination of the trial. This Court has properly said: "We must guard against the magnification on appeal of instances which were of little importance in their setting." *Glasser* v. *United States*, 315 U. S. 60, 83; cf. *Breedin* v. *United States*, 73 F. 2d 778, 780 (C.A. 4).

But beyond that, observations freely made by counsel for petitioners belie their contention. Even after the denial of the motion for a mistrial, the Rosenbergs' counsel said in his summation that "we feel that the trial has been conducted * * * with that dignity and that decorum that befits an American trial" (R. 1453). And, later, the same counsel stated that "the Court conducted itself as an American judge" (R. 1603).

But even if it is assumed that the objection was not merely an afterthought, it is plain that petitioners fail to take account of the duty of the judge in a federal criminal trial "to see that a case on trial is presented in such way as to be understood by the jury as well as by himself. He should not hesitate to ask questions for the purpose of developing the facts; and it is no ground of complaint that the facts he developed may hurt or help one side or the other." *Simon* v. *United States*, 123 F. 2d 80, 83 (C.A. 4), certiorari denied, 314 U. S. 694, quoted by the court below (R. 1651-1652). See also *Glasser* v. *United States*, *supra*, p. 83; *Quercia* v. *United*

States, 289 U. S. 466, 469; *Ochoa* v. *United States,* 167 F. 2d 341, 344 (C.A. 9); *United States* v. *Aaron,* 190 F. 2d 144, 146 (C.A. 2), certiorari denied, 342 U. S. 827.

The bias of the trial judge is said to be demonstrated by a collection of his questions which are alleged to reveal an attempt to emphasize the strong points in the Government's case, to protect and rehabilitate Government witnesses, to minimize defense evidence and contradictions in the Government's evidence, and to subject the Rosenbergs [11] to hostile cross-examination, both on their direct testimony and on their cross-examination by government counsel.

Examination of petitioners' "documentation" (in the Appendix to the Rosenbergs' petition) will show:

(1) The Appendix is, throughout, basically a distorted and unfavorable commentary and does not consist simply of excerpts from the record.

(2) Petitioners seize on the slightest attempt at clarification by the judge, such as asking a witness to fix a date (compare R. 256 with App. 1) or a location (compare R. 456 with App. 2), as illustrative of the court's attempt to help the Government's case.[12]

(3) Petitioners' present complaint that they

[11] Sobell did not take the stand.

[12] Petitioners charge, for instance, that the judge "caused a review of Julius' statement to Elitcher that others were giving military information to the Soviet Union (R. 236) and belabored the point (R. 236-237)." The record shows that

were not allowed effective cross-examination of the Government's witnesses is refuted by the comment of the Rosenbergs' counsel to the jury that "we got a pretty good picture here of them testifying, because you have been fortunate, because the Judge has been fairly lenient in permitting counsel to develop for you the kind of people who testified here" (R. 1465).

(4) The judge's interruptions of the Rosenberg's direct examination were infrequent, and were designed to develop more fully the facts about which they were testifying (e.g., R. 1084, 1086, 1090-1091, 1097, 1120, 1124-1125, 1142, 1299-1300, 1322).

(5) The flat contradictions by the Rosenbergs of earlier testimony made it inevitable that they would be peculiarly vulnerable to cross-examination.

Finally, the judge made it as explicit as possible, almost from the beginning of the trial, that it was for the jury alone to determine what the facts were (R. 231, 1544, 1563-1564). And toward the close of his final instructions he admonished the jury at length that they should put out of their minds any "impression that the judge has some opinion with reference to the guilt or innocence of the defendants, or that he thinks that some par-

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the judge asked two short questions (R. 236) on this matter, and a reading of the course of the testimony will show that it was done to clarify and pin-point exactly what was said. It is obvious that the conversation between Rosenberg and Elitcher was an important one. Examination of the next several pages (R. 237-240) of the testimony shows only two further questions asked by the judge, neither of which was directed to the point complained of.

ticular phase of the case is more important than another, or that some particular witness is more credible than another or that a certain inference of fact should or should not be made and so on" (R. 1563).

(b) Petitioners assert (No. 111, Pet. 35-36; No. 112, Pet. 44) that they were prejudiced by a statement in the judge's charge that "Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, *the enforcement of the espionage laws takes on a new significance.* Our national well-being requires that we guard against spying on the secrets of our defense" (R. 1550). (Emphasis is petitioners'.) This was, it is contended, in its context, an invitation to the jury to base its verdict "on the emotional bias of the jurors, and misguided notions of their responsibility as patriotic citizens" (No. 111, Pet. 36).

The claim is insubstantial. In the very next sentence, the judge cautioned the jury that he did "not mean that the mere allegation or use of the word 'espionage' should justify convicting innocent persons * * *" (R. 1550). Moreover, at the outset of his charge the judge told the jurors that it was their duty "to approach your task of determining the issues with your minds completely barren of prejudice or sympathy", and "to weigh the evidence in this case calmly and dispassionately, without sympathy or prejudice, for or against either the Government or the defendants" (R. 1543). He then stressed that the very importance of the

case made it all the more important that the jurors heed his "words of caution" (R. 1544). Later he stated that nothing in his instructions was intended to create the impression that he entertained an opinion as to the guilt or innocence of the petitioners, and that if the jury had formed any such impression they should "utterly disregard it" (R. 1563). Finally, the jury were emphatically instructed that they "should not hesitate for any reason" to acquit if they found that the law had not been violated (R. 1566).

A reading of the entire charge leaves no doubt that the case was submitted to the jury on the evidence alone. Indeed, counsel for the Rosenbergs conceded as much after the verdict was returned when he stated to the jury: "I feel satisfied by reason of the length of time that you took for your deliberations, as well as the questions asked during the course of your deliberations that you examined very carefully the evidence and came to a certain conclusion" (R. 1583).

(c) The Rosenbergs also complain that in summarizing their contentions as to why the Greenglasses testified against them, the judge failed to specify self-preservation as a motive (No. 111, Pet. 36-37). They argue that this was the point most stressed by the defense in summation, and that its ambiguous eclipse in the charge fatally beclouded the issue for the jury.

The judge specifically called the jury's attention to the summations and stated that for that reason he would not discuss them further (R. 1562, 1568).

Moreover, the jury were told that their recollections of the evidence governed (R. 1544), and that the judge's reference to "some portion of the evidence and not to another should not be taken * * * as any indication as to [his] opinion of the comparative importance or weight of that particular evidence" (R. 1564). Finally, the judge charged that the Greenglasses were accomplices and as such their testimony had to be considered "carefully" and acted upon with "caution" (R. 1565).

Under the circumstances, the jury could not possibly have mistaken the judge's resume of the Rosenbergs' contentions as an exhaustive statement.

(d) During their deliberations, the jury sent word to the judge that they desired to have the testimony of Ruth Greenglass read, beginning with the incident when Julius Rosenberg first approached her with respect to securing information for the Soviet Union (R. 1570). In response to a query from the judge, the jury fixed as the termination point of her testimony, David Greenglass' return home on furlough in January, 1945 (R. 1571). Thereupon, the direct testimony of Mrs. Greenglass covering the requested period was read to the jury (R. 1572). The judge declined to have the corresponding cross-examination read on the ground that the jury had not requested it (R. 1573). This refusal is claimed to have been prejudicial (No. 111, Pet. 37-39).

Any doubt whether the jury desired to hear the cross-examination was dispelled when the jurors,

after listening to the direct testimony, told the judge that they had heard what they wanted (R. 1572). Moreover, when defense counsel, in the presence of the jury, persisted in his demand that the cross-examination be read, the judge replied, "we will give the jury exactly what they request" (R. 1573). The jury then retired without making any further request. The inference is inescapable that the jury heard what they wanted.[13] Petitioners surely had no right to insist that they hear more.

5. (a) and (b) Petitioners contend that ~~the admission of~~ testimony evidencing their preferences for the Soviet Union and their activities and connections with the Communist Party ~~should~~ not have been admitted (No. 111, Pet. 40-46; No. 112, Pet. 30-38).

It is true, as petitioners contend, that if the only relevance of evidence is to show a propensity to commit crimes of the nature of the one being proved, it is not admissible. See, e.g., *Smith* v. *United States*, 173 F. 2d 181 (C.A. 9) (evidence of earlier robberies in a prosecution for robbery); *Lovely* v. *United States*, 169 F. 2d 386 (C.A. 4), certiorari denied, 338 U. S. 834 (evidence of an earlier rape in a prosecution for rape). But it is not enough to sustain a conviction under the Espionage Act to show that the defendant intended

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[13] The jury had previously been told by the Rosenbergs' counsel and by the judge in his charge that they had the right to have any testimony they wanted read to them (R. 1476, 1544).

to take certain information or that he intended to pass it to a certain person. The statute requires, as a separate element of proof, that the defendant have acted with "intent or reason to believe that [the material taken] is to be used to the injury of the United States or to the advantage of a foreign nation." Indeed, it was partly because of this explicit requirement that this Court sustained the provision against a challenge of indefiniteness. See *Gorin* v. *United States*, *supra*. And it was precisely because of this character of this statute that the admission of prior statements of opinion was sustained in *United States* v. *Molzahn*, 135 F. 2d 92 (C.A. 2), certiorari denied, 319 U. S. 774; see also, *Haupt* v. *United States*, 330 U. S. 631, 642; *Butler* v. *United States*, 138 F. 2d 977 (C.A. 7). Petitioners' argument confuses cases dealing with a general criminal intent accompanying proscribed conduct (see *Morissette* v. *United States*, 342 U. S. 246) and the specific intent of the espionage statute. The disputed evidence was clearly relevant to show petitioners' specific intent, charged in the indictment, to spy for the advantage of Russia. Although, as the Court of Appeals pointed out, "An American's devotion to another country's welfare cannot of course constitute proof that he has spied for that other country," nonetheless "this attitude bears on a possible motive for his spying, or on a possible intent to do so when there is other evidence in the case that he did such spying" (R. 1654-1655).

Moreover, the trial court's instructions to the

jury made it clear that the issue of "intent or reason to believe" was a separate one (R. 1554), and that this testimony had been admitted only for consideration on that issue; the court cautioned the jury "most strenuously that proof of Communist Party membership or activity does not prove the offense charged in this indictment, but may be considered by you solely on the question of intent which is one element of the crime charged here" (R. 1558).[14]

The Bentley testimony, of which petitioners also complain, was proper in order to show the link between the Party and the Soviet Union. It may be that sufficient notice of the character of the Party, and of its tightly knit, highly disciplined nature, exists, so that such proof was not necessary (cf. *Dennis* v. *United States*, 341 U.S. 494; *American Communications Association* v. *Douds*, 339 U.S. 382), but the testimony was nonetheless relevant on the issue of intent. As the Court of Appeals concluded in dealing with this contention, "If the jury believed [Bentley], she supplied the missing link connecting the Communist Party with the Soviet Union, and making Communist Party membership probative of motive or intent to aid Russia" (R. 1655).[15]

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[14] In addition, the court had stated the limited purpose of such testimony from the very first occasion the issue was raised (R. 181, 202, 1022). However true it may sometimes be that admonitions at the close of a trial do not erase entrenched misunderstanding, on this record it cannot be said that the jury did not understand this admonition. Cf. *Blumenthal* v. *United States*, 332 U.S. 539, 559.

[15] The evidence of Sobell's activities in the Party, going back three years before any acts in furtherance of the con-

(c) The Rosenbergs contend (Pet. 46-51) that it was error to admit Miss Bentley's testimony that between the fall of 1942 and November 1943, she received telephone calls from a person who identified himself as "Julius" (R. 991-993), and that as a result of these calls she would communicate with Golos, her superior in Soviet espionage (R. 975), following which she would receive further calls from "Julius" (R. 993).

But the evidence had already showed that Rosenberg had told Sobell and Greenglass that he had had contacts with Bentley (R. 261, 529); that Rosenberg had told the Greenglasses in January 1945 that the contact who would meet them in Albuquerque would bring greetings from himself (R. 689); that the contact, Harry Gold, was given the recognition sign, "I come from Julius," by Yakovlev (R. 822); and that Gold identified himself in that manner to the Greenglasses (R. 825). In addition, Miss Bentley testified that she had learned that "Julius" lived in Knickerbocker Village (R. 994), where Rosenberg in fact lived at the time of the calls (R. 1053).

It is clear that these circumstances constituted a proper foundation for the admission of Bentley's testimony. *Jarvis* v. *United States*, 90 F. 2d 243, 245 (C.A. 1), certiorari denied, 302 U.S. 705; *Andrews* v. *United States*, 78 F. 2d 274, 275 (C.A. 10); *Morton* v. *United States*, 60 F. 2d 696, 698 (C.A.

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spiracy were shown, was not too remote. *United States* v. *Haupt*, 152 F. 2d 771, 793 (C.A. 7), affirmed, 330 U.S. 631; *United States* v. *Molzahn*, 135 F. 2d 92 (C.A. 2), certiorari denied, 319 U.S. 774.

7), certiorari denied, 288 U.S. 607. In any event, the jury were told that they were free to accept or reject the inference that it was Rosenberg who called Bentley (R. 992).

Moreover, the evidence was not admitted to prove participation in a separate crime, as petitioners contend. It was admitted to corroborate (R. 991-992) Elitcher's testimony that Sobell had told him, after a visit to Rosenberg, that Rosenberg said he had talked to Bentley on the phone (R. 261; see p. 16, *supra*). In addition, it tended to support Greenglass' testimony that Rosenberg had told him he was about to flee because Bentley probably knew him (R. 529).

6. The Rosenbergs claim (Pet. 51-53) that it was error to admit the testimony of Ben Schneider, called as a rebuttal witness, in view of the fact that his name did not appear on the list of witnesses furnished to them prior to trial pursuant to 18 U.S.C. 3432.[16]

On cross-examination Julius and Ethel Rosenberg had both denied having any passport pictures taken (R. 1277-1278, 1361). On rebuttal, Schneider testified that the Rosenbergs and their children had passport photographs taken at his shop in May or June 1950, and that Julius told him that the pictures were needed to enable the Rosenbergs

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[16] That section, in relevant part, provides:

"A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with * * * a list * * * of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each * * * witness."

to go abroad (R. 1427-1429). He also testified that the first time he saw any agent of the Government in connection with the case was the day before he took the witness stand (R. 1425).

This Court has explicitly held that the requirement of Section 3432 is inapplicable to rebuttal witnesses whose testimony is made necessary by defense testimony. *Goldsby* v. *United States*, 160 U.S. 70, is almost exactly in point. The Court there said (p. 76):

> The words "for proving the indictment," and the connection in which they are used, clearly refer to the witnesses relied upon by the prosecution to establish the charge made by the indictment. They do not extend to such witnesses as may be rendered necessary for rebuttal purposes resulting from the testimony introduced by the accused in his defence. Indeed, that they do not apply to rebuttal is obvious from the very nature of things, for if they did, as was well said by the trial judge, it would be impossible to conduct any trial.

See also *Gordon* v. *United States*, 289 Fed. 552, 554 (C.A. D.C.); *United States* v. *Schneider*, 21 D. C. Rep. 381, 413 (Sup. Ct. D. C.)

In any event, control of the admission of testimony in rebuttal is within the discretion of the trial court. *Goldsby* v. *United States*, *supra*, at 74. Conceivably, the defense might have claimed surprise and appealed to the trial judge's discretion for a reasonable adjournment before proceed-

ing with the Schneider testimony. Their failure to ask for more time precludes their present unsupported suggestion that lack of notice "cramped an investigation that may have demolished the testimony * * *" (No. 111, Pet. 53).[17]

7. The Rosenbergs challenge the sentences of death imposed upon them (Pet. 53-59). They argue that in the circumstances of this case, and in the light of the trial judge's remarks when he passed sentence, the death sentence violates the Eighth Amendment. By the same token, they challenge the holding of the Court of Appeals that it was beyond its power to consider the propriety of the sentence, because it was within the limits fixed by the statute.

Petitioners do not deny that Congress had the power to authorize the death penalty for wartime espionage. See *Cramer* v. *United States*, 325 U.S. 1, 45. And as the Court of Appeals said (R. 1671), sixty years of undeviating federal precedent establish that an appellate court has no power over a sentence which is within the limits allowed by the statute under which the defendant was convicted. E.g., *Garcia* v. *United States*, 40 F. 2d 338, 340-341 (C.A. 8); *Beckett* v. *United States*, 84 F. 2d 731, 732-733 (C.A. 6); *Scala* v. *United States*, 54 F. 2d 608, 611-612 (C.A. 7), certiorari denied, 285 U.S. 554; *Wallace* v. *United States*, 243 Fed. 300, 310 (C.A. 7); *Carpenter* v. *United States*, 280 Fed.

[17] *Logan* v. *United States*, 144 U.S. 263, on which petitioners rely, merely contains a dictum on the applicability of this statute, and even that statement is not inconsistent with the later *Goldsby* holding.

598, 601 (C.A. 4); *Smith* v. *United States*, 3 F. 2d 1021 (C.A. 9); *United States* v. *Ward*, 173 F. 2d 628, 630 (C.A. 2); *United States* v. *Cohen*, 177 F. 2d 523, 525 (C.A. 2), certiorari denied, 339 U.S. 914. In *Blockburger* v. *United States*, 284 U.S. 299, 305, this Court said:

> Under the circumstances, so far as disclosed, it is true that the imposition of the full penalty of fine and imprisonment on each count seems unduly severe; but there may have been other facts and circumstances before the trial court properly influencing the extent of the punishment. In any event, the matter was one for that court, with whose judgment there is no warrant for interference on our part.

Even if, however, there were power of appellate review in this area, the Rosenbergs would not be entitled to relief.[18] As Judge Frank so cogently pointed out in stating his separate views on this matter (R. 1677-1682), the enormity of their crime justified the extreme penalty authorized by the statute. They conspired to pass important secret information to Russia not only during 1944-1945, but also during the "cold war" in the following years. Theirs were not sporadic acts. Rather, their activities were deliberate, long continued, and unrepentant. As this Court said of a similar contention in the *Kawakita* case (slip opinion, p. 26),

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[18] In *Kawakita* v. *United States*, decided June 2, 1952, No. 570, O.T. 1951, this Court said (slip opinion, p. 26): "Whether a sentence [within the statutory limit] may be so severe and the offense so trivial that an appellate court should set it aside is a question we need not reach."

"The flagrant and persistent acts of petitioner gave the trial judge such a leeway in reaching a decision on the sentence that we would not be warranted in interfering."

8. Petitioner Sobell contends that his motion in arrest of judgment challenging the trial court's jurisdiction over his person should have been sustained (Pet. 45-47). An affidavit in support of the motion stated, in substance, that in August 1950, Mexican police unlawfully arrested him in Mexico City, beat him, and forcibly carried him across the American border, where he was met and taken into custody by agents of the United States (R. 1590-1593).

Although Sobell made a number of pretrial motions, and although there was testimony during the trial relative to his expulsion from Mexico (R. 1024-1031), and although the allegations in his post-trial affidavit were obviously known to him before and during the trial, he remained silent until after the jury had returned their verdict. The objection came much too late. It may have been waived by his consent to his removal from Laredo, Texas, to New York. Cf. *Ker* v. *Illinois*, 119 U. S. 436, 441; *Chandler* v. *United States*, 171 F. 2d 921, 934 (C.A. 1), certiorari denied, 336 U. S. 918. It was certainly waived by his failure to raise it before trial, or to show any "cause" for his failure to do so. Rule 12(b)(2), F. R. Crim. P.;[19] *Pon* v. *United States*, 168 F. 2d 373, 374 (C.A.

[19] This rule provides: "Defenses and objections based on defects in the institution of the prosecution or in the indictment

1); see *Ford* v. *United States*, 273 U. S. 593, 606.

Moreover, lack of jurisdiction over the person is not an issue that can be raised by a motion in arrest of judgment. Rule 34, F. R. Crim. P., limits such a motion to two grounds: (1) failure of the indictment to charge an offense, and (2) lack of jurisdiction of the offense charged. The present case falls into neither category. See *United States* v. *Zisblatt*, 172 F. 2d 740, 741-742 (C.A. 2); *United States* v. *Bradford*, 194 F. 2d 197 (C.A. 2), certiorari denied June 9, 1952, No. 411 Misc., O. T. 1951; cf. *United States* v. *Lias*, 173 F. 2d 685, 687 (C.A. 4).

It is clear also that even if Mexico summarily expelled Sobell, it has not been shown that its action was unlawful. Consequently, even if the United States requested such expulsion, he cannot complain. Cf. *Ker* v. *Illinois*, *supra*; *Chandler* v. *United States*, *supra*. Finally, even if Sobell had been brought into the United States unlawfully, his conviction is not thereby invalidated. *Frisbie*

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or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding."

The "jurisdiction" referred to in the last sentence obviously is jurisdiction of the subject matter, for the first sentence of the rule refers to failure of the indictment or information "to show jurisdiction in the court." *Pon* v. *United States*, 168 F. 2d 373, 374 (C.A. 1).

v. *Collins*, 342 U. S. 519, 522; *In re Johnson*, 167 U. S. 120, 125; *Ker* v. *Illinois*, *supra*, at 444; *Mahon* v. *Justice*, 127 U. S. 700; *Malone* v. *United States*, 67 F. 2d 339, 341 (C.A. 9).

9. (a) Sobell's principal contention is that, even accepting all the evidence against him, he was not shown to have participated in the Rosenberg-Greenglass-Gold-Yakovlev conspiracy, as charged; that, at most, it shows only that he participated in a separate conspiracy with Rosenberg and Elitcher. Consequently, he urges, his conviction cannot stand (Pet. 19-30).

Two recent decisions of this Court show that the courts below were correct in rejecting this argument. *Kotteakos* v. *United States*, 328 U. S. 750; *Blumenthal* v. *United States*, 332 U. S. 539. In the *Kotteakos* case, the Court held that separate conspiracies were involved because the proof showed that at least eight separate groups of defendants, who had made similar applications for government guarantees of loans, alleged to be for housing purposes, but in fact not so, were joined together only because the same broker acted in all of them. It was concluded that no group had any interest in the success or failure of the schemes of the others. Consequently, an indictment and joint trial as for a single conspiracy was bad. In the *Blumenthal* case, on the other hand, an indictment and trial on a charge of a single conspiracy to sell whiskey above OPA ceiling prices was upheld, even though the proof showed at least two agreements, one between the unknown owner of

the whiskey and two of the defendants who owned and managed the company which appeared to own the whiskey, and the other between those two defendants and the three remaining defendants. There was nothing in the record to show that these three remaining defendants, who made arrangements to sell the whiskey to outsiders, were aware of the identity and functions of members of the group other than the two with whom they dealt. Nonetheless, this Court stated (332 U. S. at 557-558):

> We think that in the special circumstances of this case the two agreements were merely steps in the formation of the larger and ultimately more general conspiracy [to sell the whiskey at over-ceiling prices]. In that view it would be a perversion of justice to regard the salesmen's ignorance of the unknown owner's participation as furnishing adequate ground for reversal of their convictions. Nor does anything in the *Kotteakos* decision require this. The scheme was in fact the same scheme: the salesmen knew or must have known that others unknown to them were sharing in so large a project; and it hardly can be sufficient to relieve them that they did not know, when they joined the scheme, who those people were or exactly the parts they were playing in carrying out the common design and object of all. By their separate agreements, if such they were, they became parties to the larger common plan, joined together by their knowledge of its essential features and broad scope, though not of its exact limits, and by their common single goal.

The test which emerges from these decisions is whether there is one ultimate project or scheme common to all the conspirators, without respect to whether there is detailed understanding by each of the modes by which the plan is carried out. Even if some of the participants had no reason to suppose that a particular person was in the conspiracy, all are bound as co-conspirators.[20]

Judged by this standard, the evidence here establishes that all the petitioners were participants in a single conspiracy to transmit secret information, without restriction as to type, to the Soviet Union.

It is plain, as far as the Rosenbergs are concerned, that their plans were not limited to information about the atomic bomb. Even before the Greenglass-Los Alamos episode, Rosenberg had sounded out Elitcher on his willingness to funnel from the Navy Department information of any sort that might be of value to the Soviet Union in its war effort (R. 207-210).[21] And long after he received the bomb data, Rosenberg continued to obtain information about other matters of a military nature, including a "sky platform" project (R. 517-518) and the use of atomic energy in airplanes (R. 519). In addition to having con-

[20] "* * * * the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others." *Blumenthal* v. *United States*, *supra*, at 557.

[21] Indeed, Rosenberg said, as to whatever data Elitcher sent, "someone would evaluate them", and that Elichter need not worry about careful "choice" (R. 209).

tacts in New York and Ohio (R. 516), Rosenberg was constantly on the lookout for new recruits who might be able to furnish military information (R. 428, 438, 515). In short, the acquisition of bomb data was only part of a scheme whose ultimate goal was to transmit to the Soviet Union all conceivable varieties of information relating to the national defense of the United States.

Nor is there any doubt that Sobell, in dealing with the Rosenbergs, understood and shared this objective. Sobell (1) supplied Rosenberg with military information for transmission to Soviet Russia (R. 239, 260-261); (2) attempted to secure a classified ordnance pamphlet from Elitcher and told Elitcher to see Rosenberg in regard to the pamphlet (R. 245-249); (3) joined Rosenberg, after first having advised Elitcher to talk to Rosenberg before making a change, in attempting to dissuade Elitcher from leaving his job in the Navy Department so that Elitcher might be in a position to furnish information to a "contact" in Washington (R. 256-257); and (4) asked Elitcher for the names of young engineers who would be likely sources of military information (R. 254), commenting particularly on one such occasion that they should be people who "would not be suspected" (R. 255).

Sobell thus was clearly aware that the enterprise contemplated the use of numerous persons for the purpose of obtaining military information, without restriction as to kind. Compare *Nye & Nissen* v. *United States*, 336 U. S. 613. That he

may not have known that atom bomb data was being sought and supplied by other sources is unimportant. Conceding that "nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it * * *" (*United States* v. *Peoni*, 100 F. 2d 401, 403 (C.A. 2)), it is difficult to accept the contention that Sobell could not reasonably have supposed that the Rosenberg network, of which he was a member, involved transmitting tremendously important kinds of data. There is not a "different kind of a difference" (see Pet. 26) between data on the bomb and the large, albeit random, collection of data about the United States military effort that Sobell must have known was being undertaken.

Beyond this, it must be accepted as a commonsense datum that anyone engaged in Soviet espionage must have known that he was part of a network larger than himself and his contacts. He must also have known that the first condition for either the effectiveness or success of the operation lay in a studied and intricate secrecy. And he must, finally, have acquiesced in playing his part in this conspiracy without knowledge of, though with real concern for, the activities of his unknown co-conspirators. The state of mind of one whose loyalties are divided as the record shows Sobell's must have been, cannot fairly be narrowly confined, as that of the *Kotteakos* or *Blumenthal* conspirators might have been, to some single or relatively limited end. Compare *United States* v.

Manton, 107 F. 2d 834, 848-850 (C.A. 2), certiorari denied, 309 U. S. 664. Sobell spied, he encouraged another to spy, he was on the lookout for others to corrupt to the same end, all in conjunction with Rosenberg, whom he knew not to be operating alone. Whatever the ultimate scope of the "agreement" made by Sobell, as evidenced by what this record shows, the conspiracy of which he has been convicted is well within its limits. Cf. *United States* v. *Tramaglino* (C.A. 2, June 30, 1952).

(b) Sobell's further argument, supported by Judge Frank's partial dissent below, that the issue whether he was a party to a "giant" conspiracy or a separate conspiracy should have been submitted to the jury, is answered by the record. The court charged, in part, as follows (R. 1552):

> With these general principles as a guide you will approach the important question of whether the prosecution has proved beyond a reasonable doubt the existence of the conspiracy alleged in the indictment, and if such a conspiracy did exist, whether the defendants or any of them were parties to it and whether such defendants entered it with knowledge of its nature and purposes.
>
> You must first determine from all the evidence in the case * * * whether or not a conspiracy existed. If you decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he was a member of the conspiracy. He or she. In considering whether or not a particular defendant was a member of the conspiracy, you

> must do so—I repeat that: In considering whether or not a particular defendant was a member of the conspiracy, as to that particular element, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership of a particular defendant from the evidence concerning his own actions, his or her own actions, his or her own conduct, his or her own declarations, or his or her own statements, and his or her own connection with the actions and conduct of others.

And later, the court also stated (R. 1560):

> Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point that out because the Government contends that Sobell was in the general conspiracy to obtain information of a secret nature. To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country.

There is no way that the jury could, pursuant to these instructions, have found Sobell guilty without first finding that a comprehensive conspiracy existed and then deciding that Sobell was a part of it, believing that he understood and agreed

to the conspiracy with which he was in fact charged.[22] Cf. *Peters* v. *United States*, 160 F. 2d 319, 321 (C.A. 8) certiorari denied, 331 U. S. 825.

10. (a) Sobell also challenges (Pet. 39-40) the admission of evidence that he had gone to Mexico shortly before his arrest, that there he made efforts to leave, not to return to the United States, that he used a number of aliases while in Mexico, and that while there he sent letters under assumed names. This evidence was submitted to the jury as a legitimate basis for inferring a guilty mind, when viewed in conjunction with all the other evidence in the case (R. 1559-1560). This was plainly correct. *United States* v. *Heitner*, 149 F. 2d 105, 107 (C.A. 2), certiorari denied, 326 U. S. 727 (flight); *Robinson* v. *United States*, 114 F. 2d 475 (C.A. D. C.) (false name); 2 *Wigmore, Evidence* (2d ed. 1940) § 276(4).[23] If "guilty motive" is of any relevance (see Pet. 39), the evidence previously introduced clearly permitted the inference that it existed (*supra*, pp. 10-11, 17-18).

---

[22] The record references in this and the preceding subsection are a sufficient answer to the Sobell argument that there was no substantial evidence against him (Pet. 41-43). The argument seems to come down to the proposition that circumstantial evidence cannot be used against him. This is not so. *United States* v. *Randall*, 164 F. 2d 284, 289 (C.A. 7); *United States* v. *Rollnick*, 91 F. 2d 911 (C.A. 2); *Peters* v. *United States*, *supra*.

[23] *Wigmore* states: "It is today universally conceded that the fact of an accused's flight, * * * assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself. * * * This principle has been so many times sanctioned that its frequent modern repetition has become redundant; no further judicial attention should be paid to any bill of exceptions so presumptuous as to raise the question."

(b) Sobell further challenges (Pet. 40-41) the admission of an entry contained on an official record made in Sobell's presence by an inspector of the Immigration and Naturalization Service shortly after the Mexican authorities brought Sobell to his office, which stated that he had been "deported from Mexico". (R. 1025, 1030-1031; Pet. 40-41). It is claimed to be irrelevant and hearsay.

The record was plainly relevant to show that Sobell's return to the United States was not voluntary, and was thus probative to show flight.

Moreover, it was competent. The inspector who made the entry testified that he was under a duty to do so in the case of every deportee from Mexico (R. 1027, 1036), and that he made the entry in the regular course of his duties on the basis of personal observation, as was his custom in cases of similar character (R. 1027). Thus, the trial court correctly admitted the entry under the business entry statute, 28 U. S. C. 1732.[24] In addition,

[24] This section provides:

"In any court of the United States * * *, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

"All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

"The term 'business,' as used in this section, includes business, profession, occupation, and calling of every kind."

the entry was admissible as an "official statement" made in the course of the entrant's official duties as a federal employee. 28 U. S. C. 1733;[23] *United States* v. *Ward*, 173 F. 2d 628, 629-630 (C.A. 2); *United States* v. *Grayson*, 166 F. 2d 863, 868 (C.A. 2). And, in addition, the entrant personally appeared at the trial and was subject to cross-examination (R. 1031-1037).

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[23] This section provides: "(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept."

CONCLUSION

The Court of Appeals "scrutinized the record with extraordinary care to see whether it contained any of the errors asserted" (R. 1644). It stated further that, although it is inclined to regard as harmful an error otherwise probably harmless where it regards the sentence as unduly harsh, no such errors affecting the Rosenbergs were found (R. 1671). Since most of the issues affect both Sobell and the Rosenbergs, they have thus been reviewed with unusual care and thoroughness as to all the petitioners, and resolved against them. We therefore respectfully submit that the petitions for writs of certiorari should be denied.

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JULY 1952.

☆ U. S. GOVERNMENT PRINTING OFFICE 1952 719909 100

Office - Supreme Court, U.S.
OCT 1952

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG and ETHEL ROSENBERG,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG and ETHEL ROSENBERG,
Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR REHEARING

The petitioners, Julius Rosenberg and Ethel Rosenberg, pray for a rehearing and reversal of the order of this Court, entered on October 13, 1952, denying their petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

This petition for rehearing is made, pursuant to the provisions of Rule 33 of the rules of this Court, upon substantial grounds available to the petitioners, although not previously presented.

Reasons Why a Rehearing Should be Granted and a Writ of Certiorari Issued

The petitioners urge five substantial grounds, previously available to them, although not presented on their original petition for a writ of certiorari. They submit to the Court, however, that justice will not be done unless this

Court grants review, not only of the questions presented here, but of the issues heretofore raised in the original petition.

The significance and portent of this case, unique in the annals of our jurisprudence, in which the petitioners, husband and wife, stand to forfeit their lives, merit the full measure of the consideration of this Court.

I

The Espionage Act (18 U. S. C. A. Sec. 32(a) and 34, now 18 U. S. C. A. Sec. 794) as construed by the Courts and applied to the facts of this case violates Article III, Section 3 of the Constitution of the United States. The article declares:

> "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

This constitutional prescription, on its face, and by judicial interpretation, establishes the two essential elements of the crime of treason: adherence to the enemy and rendering him aid and comfort, the former a state of mind, and the latter a physical act. *Cramer* v. *United States*, 325 U. S. 1 (1945).

Historically, the single characteristic of the high crime of treason, which distinguishes it from all other crimes, is the state of mind of a citizen which puts him in mental opposition to the interests of the United States and its citizens, during time of war. The overt act requirement was deemed only insurance against the punishment, as crime, of purely mental processes. *See, e.g.: United States* v. *Fries*, 9 Fed. Cas. No. 5, 126 (1799); *United States* v. *Fries*, 9 Fed. Cas. No. 5, 127 (1800); *United States* v. *Hanway*, 26 Fed. Cas. No. 15, 299 (1851); *United States*

v. *Horie*, 26 Fed. Cas. No. 15, 407 (1808); *United States* v. *Warren*, 247 F. 708 (D. C., E. D. Pa., 1918). The essence of these cases is stated in McKinney, *Treason under the Constitution of the United States*, 12 Ill. L. Rev. 381, 383-4, 394 (1918):

> "* * * the law of treason differed from that of other crimes in this, that the intention to break ties of allegiance was the prime thing, and the overt act only necessary in that purely mental processes might not be punished as crimes.
>
> "* * * 'adhering to their enemies' * * * comprises those [persons] who consciously and of their own free choice are not 'on our side', but who put themselves in mental opposition to the purposes, wishes and desires of the United States and its citizens while engaged in its foremost right and chief duty as a nation, that of defending itself, its sovereignty and its rights. Such a person, although not yet legally guilty of the crime of treason, has nevertheless been guilty of his breach of allegiance to the United States, and needs only to add to such breach of allegiance (which is the essence of treason) some overt act, to make him legally and completely guilty of the crime of treason * * *."

This Court has acknowledged the correctness of this view. See: *Cramer* v. *United States*, *supra*; *Haupt* v. *United States*, 330 U. S. 631, 634-35. In the *Cramer* case, the Court stated (at p. 45):

> "Of course we do not intimate that Congress could dispense with the two-witness rule merely by giving the same offense another name. But the power of Congress is in no way limited to enact prohibitions of specified acts thought detrimental to our wartime safety. The loyal and the disloyal alike may be forbidden to do acts which place our security in peril, and *the trial thereof may be focussed upon the defendant's specific intent to do those particular acts thus eliminating the accusation of treachery and of general intent to betray which have such passion-rousing potentialities* * * *." (Emphasis ours.)

In the instant case, the court below ruled that the statutory intent under the Espionage Act could be, and was here, satisfied by "evidence of an American's devotion to another country's welfare" (R. 1654). On this thesis, the court approved the introduction of evidence "to the effect that (1) the defendants expressed a preference for the Russian social and economic organization over ours, and (2) that the defendants were members of the Communist Party" (R. 1654), which "was part of, and subject to, the Communist International * * * [and] received orders from Russia to propagandize, spy and sabotage; and that Party members were bound to go along with those orders under threat of expulsion" (R. 1655).

The conjunction of the concept evolved and the proof accepted by the court below permitted evidence of intent indistinguishable from haboring "sympathies or convictions disloyal to this country's policy or interest" [*Cramer* v. *United States, supra*, at p. 24]; or "intention * * * to injure the Unites States" [*Haupt* v. *United States, supra*, at p. 641]; or "want of loyalty to the government" [*Charge to Grand Jury—Treason*, 30 Fed. Cas. No. 18, 272 (1861), at p. 1036], states of mind heretofore deemed adequate to meet the criteria for proof of "treasonable" intent.

When the lower court's construction of the intent provisions of the Espionage Act is read together with this Court's interpretation of the scope of that Act in *Gorin* v. *United States*, 312 U. S. 19 (1941), it becomes apparent that the statute as construed and applied here created an identity between the criminal state of mind contemplated under the treason clause and that under the Espionage Act. In the *Gorin* case, this Court stated (at pp. 29-30): "* * * No distinction is made between friend or enemy. Unhappily the status of a foreign government may change." The accepted rationale that potential enmity is the equivalent of present enemy status, combined with the construction of the law and proof admitted in the instant case, established here an intent equivalent in every way to treasonable intent.

The petitioners were citizens of the United States and the prosecution against them was for violations of the Espionage Act in time of war. Since the substantive provisions of the Espionage Act, and the substantive breaches of the law allegedly proven in the instant case, unquestionably constitute giving "Aid and Comfort" under the treason clause [see: e.g., *Cramer* v. *United States, supra; Haupt* v. *United States, supra; United States* v. *Werner*, 247 F. 708 (D. C., E. D. Pa., 1918); *Charge to Grand Jury—Treason, supra; Charge to Grand Jury*, 30 Fed. Cas. No. 18, 271 (1861); *United States* v. *Greathouse*, 26 Fed. Cas. No. 15, 254 (1863)], the Espionage Act permitted the conviction and the petitioners were convicted of, a crime, identical to the crime of treason,[1] an identity completed by the imposition of a sentence of death, a penalty traditionally accorded to traitors. See: *United States* v. *Greathouse, supra;* Hurst, *Treason in the United States*, 58 HARV. L. REV. 375, 425.

In the most pragmatic sense, the petitioners were tried as "traitors". The prosecutor, in his opening statement derogated the "loyalty" of the petitioners to this country (R. 180, 181), described their activities as "traitorous" and "treasonable", promised the jury overwhelming "evidence of these traitorous acts" (R. 182, 183, 184) and repeated, in his closing, references to the petitioners as "traitors" and their "betrayal" (R. 1517, 1518, 1535).

The trial judge himself charged the jury that "irrational sympathies must not shield proven traitors" (R. 1550), and, made it clear on the sentence, that he was impelled to invoke the death penalty by his belief in the petitioners'

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[1] The court below misstated and misconstrued this contention of the petitioners, on rehearing, when it attributed to them the assertion that the crime of which they were convicted was lesser than, or in some elements, different from, treason (R. 1709-10). For this reason the lower court's reliance on *Ex parte Quirin*, 317 U. S. 1 (1942), was inapt, even if it be assumed that the *Quirin* case is sound (see *infra*, pp 7-10). In the *Quirin* case, according to the court, the elements of the crime charged and proven, differed in at least one aspect from treason.

"treachery" and "betrayal of their fellow countrymen" (R. 1613, 1614, 1615).

This Court has proclaimed that the requirements of the treason clause can neither be overridden nor circumvented by "giving the same offense a different name". *Cramer* v. *United States*, *supra*, at p. 45. The authorities are equally insistent that:

> "* * * Where [a] defendant is charged with conduct involving all of the elements of treason within the constitutional definition, and the gravamen of the accusation against him is to aid its [the country's] enemies, it would seem in disregard of the policy of the Constitution to permit him to be tried under another charge than treason."

Hurst, *Treason in the United States*, *op. cit.*, *supra*, at p. 21. See also: *Wimmer* v. *United States*, 264 F. 11 (C. C. A. 6th, 1920), cert. den. 253 U. S. 494; *United States* v. *Greathouse*, *supra*.

The petitioners, here, were subjected to a treason prosecution, under color of a charge of conspiracy to commit espionage. Under the facts of this prosecution, where the accusation involved disclosure of atom-bomb secrets to the Soviet Union, a circumstance, in the contemporay climate, of inherent "passion-rousing potentialities", the petitioners were constrained to bear the added burden of the "passion-rousing potentialities" of an actual charge of "treason". And this without the constitutional safeguards afforded persons accused of treason, namely, conviction only on the "Testimony of two witnesses to the same overt Act". Were these petitioners accorded the protections secured to them by the Constitution, they would not have been compelled to stake their lives on the uncorroborated and second hand evidence of accomplices introduced on the theory of, and in the dragnet of, a conspiracy prosecution.[2] "The [trea-

[2] Some of the alleged overt acts here, because innocent on their face, would have been incompetent to prove treason. *Cramer* v. *United States*, *supra*. Others, otherwise competent on the treason

son] provision was adopted not merely in spite of the difficulties put in the way of prosecution but because of them." *Cramer* v. *United States*, *supra*, at p. 48. Mr. Justice Jackson, writing in the *Cramer* case, noted that this policy was justified because "prosecutions for treason were generally virulent; and perjury too easily made use of against innocence".

It is submitted, therefore, that the entire proceeding below was in derogation of Article III, Section 3 of the Constitution of the United States.

II

The court below, ignoring the equivalence between friend and enemy postulated by the *Gorin* case, reasoned that the Espionage Act, as construed, and here applied, rendered criminal, only, aid and comfort to a "friend", and that the crime, although "of the same kind as treason", was, therefore, not treason. To arrive at this conclusion, the court relied on the ruling of this Court in *Ex parte Quirin*, 317 U. S. 1, 38 (1942), to the effect that a crime distinct from treason is committed where it differs, in any element, from the constitutional definition of treason (R. 1709-12).

The petitioners submit that precisely because the Espionage Act (if the *Gorin* case be ignored) was construed and here applied so as to license prosecution for rendering aid and comfort to other than an "enemy"—where, otherwise, the crime is "of the same kind as treason"—it violates the strictures of Article III, Section 3 of the Constitution.

charge, were not proved by the testimony of two witnesses. The evidentiary standards to prove the requisite intent, would not have been met. See *Haupt* v. *United States*, *supra*; *Cramer* v. *United States*, *supra*. It is impossible to tell on the jury's general verdict whether it selected, as evidence for conviction, that which would have satisfied treason criteria.

Their assertion is enforced by the universal recognition that the treason clause was designed to curb the evolvement of new treasons. This Court, in *Cramer* v. *United States, supra,* at p. 24, said of its framers:

> "They wrote into the organic act of the new government a prohibition of legislative or judicial creation of new treasons."

If, therefore, a "proposed law on the subject of Treason neither enlarges nor lessens its Constitutional definition, the law is unnecessary; *if it does the one or the other it is unconstitutional*". 5 King, LIFE AND CORRESPONDENCE OF RUFUS KING (1898) 73-75. (Emphasis ours.) And if Congress should seek to evade the plain mandate of the treason clause "by giving the same offense another name", such a law would, as well, violate the Constitution. *Cramer* v. *United States, supra,* at p. 45.

The variation in elements between a crime defined by statute and the constitutionally defined crime of treason is apparently not of the essence in taking the constitutional measure of a statute. On the one hand, if a crime is "of the same kind as treason", the differences in elements may spell its constitutional doom. If, on the other hand, they are differences which neither enlarge nor lessen the constitutional definition, the crime remains treason, under the aegis of Article III, Section 3, and the differences become meaningless. The focus of any examination to ascertain a statute's constitutional validity *vis-a-vis* the treason clause must, therefore, be directed to the constant core of the issue: whether the crime created is "of the same kind as treason".

It is indicated in Point I above (see, *supra,* pp. 2-3) that the single factor which distinguishes treason from all other crimes, whether of greater or lesser degree, is the general intent to oppose and betray the interests of the United States.

Even apart from the rationale of the *Gorin* case referred to hereinabove, it is not novel, in times of international tension, to infer such an intent from adhering to a nation not formally at war with this country. The undeclared maritime conflict between the young republic and France in 1798 produced a ruling from Attorney General Lee that "France is our enemy, and to aid, assist, and abet that nation in her maritime warfare will be treason in a citizen or any other person within the United States not commissioned by France". 1 Op. Atty. Gen. (Gilpin Ed., 1841), pp. 49-50. The reaction of the prosecutor and judge in the instant case—and, undoubtedly, the jury and the public—demonstrate that, in the current era of "cold war", adherence to the "friendly" Soviet Union may well be regarded as "betrayal" (R. 180-84, 1517-18, 1535, 1550, 1613-15).

In the light of this history and the policy of the treason clause to guard against the unlimited "accusation of treachery" and to protect those charged with the "general intent to betray which has such passion-rousing potentialities" [see *Cramer* v. *United States*, *supra*], where the burden of a prosecution, under statutory mandate, is proof of "betrayal", the crime is "of the same kind of crime as treason." And insofar as the elements of that crime diverge from the constitutional definition of treason, they "enlarge" or "lessen" it, and thereby violate Article III, Section 3 of the Constitution, as does conviction upon such charge without recourse to its procedural protections on the trial. Any other view would render the treason clause powerless to prevent the creation of "new treasons", and would permit convictions for such treasons without the procedural safeguards for which provision is made. Yet literal adherence to the ruling of the *Quirin* case, a "hard case", could only produce these consequences.

Viewed in this aspect, there appears to be unquestioned validity to the criticism of Willard Hurst that the *Quirin* case serves to emasculate the treason clause. In his study of the background and present meaning of the treason

clause, solicited by the Department of Justice in connection with the reargument of the *Cramer* case before this Court, he stated (*Treason in the United States, op. cit., supra,* at pp. 421-22):

> "The decisions cited as analogies by the Court [in the *Quirin* case] are now standard authorities holding that the double jeopardy clause of the Constitution is not violated by conviction of two or more offenses which are in substance part of the same transaction, but which involve different elements in the allegation. It is not a convincing interpretation to apply to a constitutional guaranty having its own history of policy a formal test developed under a different clause of the Constitution, with no demonstration that the policies behind the respective clauses are so similar as to be fulfilled by the same criterion. The double jeopardy clause is historically a guaranty against abuse of the law enforcement machinery as such, without reference to abuses peculiar to any one of the major types of crime. When the Constitution singles out the offense of treason as subject to special abuse, citation of a highly technical rule developed by judicial construction out of the general guaranty is in itself little evidence that the peculiar dangers against which the special guaranty was erected have been avoided."

The court below, in the instant case, read the Espionage Act to permit its specific statutory intent to be proven by evidence demonstrative of a "general intent to betray" (see *supra,* p. 4), thereby transforming that law, by judicial fiat [*Screws* v. *United States,* 325 U. S. 91 (1945); *Skirotes* v. *Florida,* 313 U. S. 69 (1941); *Hebert* v. *Louisiana,* 272 U. S. 312 (1926)], into a "treason" statute, and the trial of the petitioners into a "treason" trial. That criminality can thus flow, under the Espionage Act, from adherence to a country not an "enemy" of the United States, cannot be seen as other than an "enlargement" of the constitutional definition of treason. That under such circumstances conviction was had without "Testimony of two Witnesses to the same overt Act", cannot be viewed as

other than in derogation of the procedural requirements of Article III, Section 3.

The court is urged, therefore, to consider revision of the *Quirin* case insofar as it deems itself inhibited thereby from ruling that the Espionage Act, as construed by the court below, violates Article III, Section 3, and that the convictions had herein were secured in contravention of its provisions.

III

In the context of Points I and II above, the acceptance of proof of criminal intent by imputation from the alleged "Communist" affiliations of the petitioners, can now fully be seen to have opened a Pandora's box of evils.

Evidence of "devotion to another country's welfare" (R. 1654), admitted to prove the intent under the Espionage Act, as we have shown, transmuted that Act into a "treason" statute, and the trial into a "treason" trial. "Devotion" was established by evidence merely "to the effect * * * that they [petitioners] were members of the Communist Party". No proof was offered of their personal knowledge or acceptance of the tenets of that party, if any, that they were obliged, *qua* members, to commit espionage on behalf of the Soviet Union.

Kutcher v. *Gray* (No. 11172), decided on October 16, 1952, by the Court of Appeals for the District of Columbia, affirmed that membership in a Communist (Trotskyite) Party *per se* does not import "disloyalty" or disloyal adherence. This ruling, in essence, reaffirms *Schneiderman* v. *United States*, 320 U. S. 118 (1942), on the basis of which the petitioners had urged the exclusion of the "Communist" evidence (Petition for Certiorari at p. 40 *ff.*). Both of these cases were civil proceedings, where the evidentiary standards of protection are less stringent than in criminal trials. The acceptance of such evidence in a criminal case presents error of such gravity as to require examination by this Court, for this evidence was concededly "highly in-

flammatory" (R. 1655), prejudiced the petitioners and created the constitutional infirmities which we raise in this petition.

IV

The due process clause of the Fifth Amendment to the Constitution is the guardian in "our concept of ordered liberty" of "what is deemed reasonable and right". See *Wolf* v. *Colorado*, 338 U. S. 25, 27 (1949). A sentence which is incompatible with due process of law will not be permitted to stand. *Townsend* v. *Burke*, 334 U. S. 736 (1948); *Williams* v. *New York*, 337 U. S. 241, 252 (1949).

The exercise of the wide discretion vested in a sentencing judge to acquire information on which to base his determination does not include a right to rely on unfair and "materially untrue" assumptions, "whether by carelessness or design". *Townsend* v. *Burke*, *supra*, at p. 741.

We press upon the court that the sentences here outrage decency and offend civilized concepts of fair play, founded as they were on "materially untrue" facts and extravagant assumptions.

The record in this case concededly embodies the entire basis upon which the trial court bottomed its determination to inflict the sentences of death upon the petitioners (R. 1674). Removed from the proximity, in time, of the conflict of a "passion-rousing" trial, an objective reading of the trial judge's remarks on sentence must agitate the candid conscience. His reasons assail reason and the intelligent and informed mind; they are an admixture of misinformation, sired by ignorance, and of unfair syllogisms, erected on infirm premises.

The justification of death in this case was that the "crime was worse than murder" (R. 1614). To find warrant for this view the trial judge disregarded the plain record—his only avowed source of information—to saddle the petitioners with a will to harm their country and to hold them culpable, contrary to the facts of history and science, for

a succession of national disasters. On this perverted foundation, the judge rested his conclusion that "plain deliberate contemplated murder is dwarfed in magnitude by comparison with [petitioners'] crime" (R. 1614).

The conspiracy was allegedly conceived at a time when the Soviet Union was a war-time ally, respected, aided and extolled by the Government of the United States and its public and private leaders. Nevertheless, the trial judge stated on sentence:

> "Citizens of this country who betray their fellow countrymen can be under none of the delusions about the benignity of Soviet power that they might have been prior to World War II" (R. 1613). "* * * Indeed, by your betrayal you undoubtedly altered the course of history to the disadvantage of our country. No one can say that we do not live in a constant state of tension. We have evidence of your treachery all around us every day—for the civilian defense activities throughout the nation are aimed at preparing us for an atom-bomb attack" (R. 1615).

He commented further:

> "Nor can it be said * * * that the power which set the conspiracy in motion * * * was not openly hostile to the United States at the time of the conspiracy" (R. 1615).

These remarks, conjoined with his limitation of the period of Soviet "benignity" to a time "*prior* to World War II", warped history to attribute to the petitioners' hostile mind *in limine*. Common knowledge of our wartime alliance with the Soviet Union, of course, confutes this legerdemain.

Moreover, the indictment on which petitioners were tried did not charge an "intent to injure" the United States, as it can be assumed it would have, were the Government in possession of evidence to establish such an intent. And, indeed, the record is bare of any such proof.

The forced finding that the petitioners had an "intent to injure" the United States changed the quality and gravity

of the offense.[3] Yet it was on the basis of the intent thus transmuted from "intent to advantage" to "intent to injure" that the sentences were inflicted. Fair play abominates the stratagem which makes the crime fit the punishment.

The trial judge cojoined with this fabricated malevolence of the petitioners, a weird and aggravated estimate of the importance and proximate consequences of their alleged crime, to extenuate the barbarity of his sentence. He stated:

> "I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country" (R. 1614-15).

Patently, these statements are unmitigated fiction. Their judicial pronouncement cannot serve to square their unreality with the facts of life, nor can sentences so spuriously supported comport with due process of law.

No one, other than the trial judge, has even pretended that the atom-bomb material allegedly transmitted in the course of the instant conspiracy, was of any substantial value to the Soviet Union.

As a general proposition, Dr. Harold C. Urey, one of the directors of the atomic bomb project, has affirmed that:

> "Any spies capable of picking up this information will get information more rapidly by staying at home and working in their own laboratories." N. Y. TIMES, March 3, 1946, p. 12.

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[3] Congress in passing the ATOMIC ENERGY ACT of 1946 (42 U. S. C. A. Sec. 1816) did not see fit to prescribe the death penalty for atomic espionage except where there exists an intent to injure the United States.

Specifically in relation to this case, the Government itself, after the trial, conceded that: "Greenglass' diagrams have a theatrical quality", and because he was not a scientist, "must have counted for little". *Report on Soviet Atomic Espionage,* Joint Comm. on Atomic Espionage, 82nd Cong., 1st Sess. (U. S. Gov't Printing Office, April, 1951). Reflections on the lack of value of the information allegedly transmitted here persist in scientific critiques. See: TIME, March 19, 1951;[4] LIFE, March 26, 1951;[5] SCIENTIFIC AMERICAN, May, 1951.[6] See also: Urey, N. Y. TIMES, March 3, 1951.[7]

It is perfectly clear that such valueless information could have had little effectiveness "in putting into the hands of the Russians the A-bomb", even had they not possessed the "secret".

It is universally conceded, propaganda to the contrary notwithstanding, that there was no basic "secret" concerning atomic weapons. Dr. J. Robert Oppenheimer, N. Y. TIMES, January 15, 1951; ATOMICS, September, 1949; Letter of Harold C. Urey to N. Y. TIMES, May 11, 1950. This concession extends as well to "know-how". The United States Atomic Energy Commission itself has supported this view, as quoted in an International News Service release datelined Washington, D. C., December, 1950:

> "The Atomic Energy Commission Friday bared secret documentary proof that Russia has known the

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[4] "* * * some of his [Greenglass'] testimony made little scientific sense."

[5] "* * * Greenglass' implosion bomb appears illogical, if not unworkable * * *."

[6] "What the newspapers fail to note was that without quantitative data and other necessary accompanying information, the Greenglass bomb was not much of a secret."

[7] Detailed data on the atom bomb, he declared, would require "eighty to ninety volumes of close print" which only a scientist or engineer would be able to read.

> scientific secrets of *atom-bomb manufacture* since 1940, the year the United States began attempts to develop the missile." (Emphasis ours.)

The decisive factor, in terms of the extent of the time lag between our possession of the bomb and its development by the Soviet Union, was the degree of the industrial strength and technology of the Soviet Union, not its scientific knowledge. That time lag was given, by experts, an outside limit of five years. Dr. Irving Langmuir, N. Y. TIMES, October 9, 1945, p. 9; Newman, *Control of Atomic Energy*, 56 YALE L. J. 769; *Report on Soviet Atomic Energy*, *op. cit.*, *supra*, at pp. 7, 13-14. On this topic, Dr. Urey commented:

> "In my opinion if we published all our data in detail we would not shorten the five * * * years of General Grove's estimate by very much. It takes time to build plants, and it takes time to operate them. Address, reprinted in SCIENCE, November 2, 1945.

Scientific judgment undermines the validity of the trial judge's claim that the petitioners' conduct, did or could have, put "into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb". Because of these findings of the scientific world, matters of common knowledge before the trial here, this basis for imposing death is exposed as "materially untrue", a vice which must vitiate the sentences.

If the trial judge displayed irresponsibility, in blinding himself to the facts and capitulating to the popular myth of atomic monopoly, he threw all rationality and judicial temperance to the winds when he judged the petitioners' to have "caused * * * the Communist aggression in Korea, with the resultant casualties exceeding 50,000 * * *" and thus "undoubtedly [to] have altered the course of history to the disadvantage of our country".

The question of the responsibility for the commencement of the war in Korea is still hotly debated in this

country, and inconclusively resolved.[8] But one fact is uncontrovertibly clear: No responsible official fastens this guilt on the petitioners. While in the arena of political life, it is not uncommon to create "whipping boys", due process cannot sanction similar judicial victimization in the courtroom.

Yet all the convoluted reasoning of the trial judge cannot conceal the basic inequity in measuring the severity of the punishment on the gauge of extant political circumstances.[9]. Since reason understands that this crime, if disposed of at the time it was laid, would not have incurred a harsh or vindictive sentence, the sense of fairness is shocked by the exaction of retribution for subsequent events

[8] The following are some of the varied opinions of American statesmen on the responsibility for the origin of the conflict: Sumner Wells (N. Y. WORLD-TELEGRAM, March 28, 1951, p. 24: "The statement issued by the State Department in January 1950, that the Republic of South Korea * * * was 'not within our line of defense'."); Thomas E. Dewey (N. Y. TIMES, Sept. 19, 1951, pp. 10-11: "'On-again-off-again' policy on Formosa * * *."); Dwight D. Eisenhower (N. Y. TIMES, Sept. 5, 1952, p. 1: "We are in that war because this Administration abandoned China to the Communists."); Retired Rear Admiral Ellis M. Zacharias (N. Y. TIMES, June 21, 1951: "Korea was a blunder by both Russia and the United States."); Wilbur W. Hitchcock, former member U. S. Military Gov't in Korea (CURRENT HISTORY, March 1951: "* * * Soviet Union in fact did not initiate the war [and] far from throwing the switch, was just as surprised as was the Western World when the North Koreans threw the switch.")

These examples could be multiplied *ad infinitum;* there are almost as many opinions as people.

[9] The vindication of the sentences by the court below on the ground of the continuance of the conspiracy into the "cold war" period (R. 1680-81) is a mere rationalization of the trial judge's position. Were this the criterion it would have been reasonable to expect a sentence other than death for the petitioner, Ethel Rosenberg, as to whom the record is bare of post-war involvement. And as to both petitioners, the concurring judge (Frank, J.) suggested consideration on sentence of "the fact that the evidence of the Rosenbergs' activities after Germany's defeat (as well as of their earlier espionage activities) came almost entirely from accomplices" (R. 1677).

and reversed political relations over which the petitioners had neither control nor clairvoyance to fortell.

The concept of fair play, the essence of due process, commands that these sentences be set aside.

V

In their petition for a writ of certiorari, the petitioners interposed a challenge to the constitutionality of the sentence which, if upheld, would have precluded the necessity for consideration of the sentence of death on the level of an abuse of discretion of the sentencing judge.

The denial of the writ of certiorari now makes it appropriate to raise the question of the excessiveness of the sentences.

Section 2106 of Title 28 U. S. C. A. provides:

> "The Supreme Court or any other Court of appellate jurisdiction may affirm, modify, vacate, set aside or review any judgment * * * lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment * * *, or require such further proceedings to be had as may be just under the circumstances."

It is difficult to conceive of a statute drawn more clearly and explicitly to express the legislative intent to confer the broadest power upon the Federal appellate courts to control in whole and in detail judgments of the lower courts.

A fortiori, sentence, which is embodied in and forms an integral part of a judgment of conviction, would be reached by the power to " * * * modify, vacate, set aside or reverse * * * ".

The question of appellate power to revise a sentence under the terms of Section 2106 is *res nova*. The court below acknowledged that "No decision by the Supreme Court or any Federal Court of Appeals seems to have cited or considered this statute in passing on the question of the power to reduce a sentence when a conviction is affirmed" (R. 1673-74).

If the various Federal Courts of Appeal have denied themselves this power their decisions have not been influenced by any inhibitions on power contained in Section 2106.

The court below, nevertheless, considered itself impotent in the face of what it termed "sixty years of undeviating federal precedents" holding "that an Appellate Court has no power to modify a sentence" (R. 1671). In this the lower court fell into error. Authorities which so hold rely on the anachronism of a rule enunciated in *Ex parte Watkins*, 7 Pet. 568, 574, decided at a time when the Supreme Court had no Federal criminal appellate jurisdiction over either judgments or sentences, and prior to the enactment of Section 2106 or its predecessors. But this Court, even without dependence upon the authority of Section 2106, has never disclaimed the power to interfere with an arbitrary or excessive sentence, although within statutory limits.[10]

The lower court invoked *Blockburger* v. *United States*, 284 U. S. 299, as an impediment to its assumption of power. Yet this Court there stated (at p. 305):

> "Under the circumstances, so far as disclosed, it is true that the imposition of the full penalty of fine and imprisonment upon each count seems unduly severe; but there may have been other facts and circumstances before the trial court properly influencing the extent of the punishment. In any event, the matter was one for that Court, with whose judgment *there is no warrant for interference* on our part." (Emphasis ours.)

Were "power" the issue, there would have been no occasion to discuss "warrant". This is made clear by the latest pronouncement of this Court in *Tomoya Kawakita* v. *United States*, 72 S. Ct. 950, 966 (1952), where the court, in relation to the severity of the sentence, stated:

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[10] The courts have always assumed power where the sentence imposed was in excess of the statutory limits. See cases cited by court below at R. 1671. This Court has similarly assumed power to modify a sentence where no statute governs the limits of punishment and penalty is left to the discretion of the court. *United States* v. *United Mine Workers*, 330 U. S. 258 (1947).

> "The trial judge imposed the death sentence. The argument is that that sentence was so severe as to be arbitrary. It was, however, within the statutory limits. Whether a sentence may be so severe and the offense so trivial that an appellate court should set it aside is a question we need not reach. The flagrant and persistent acts of petitioner gave the trial judge such a leeway in reaching a decision on the sentence that we would not be warranted in interfering. Cf: Blockburger v. United States, 284 U. S. 299, 305."

In short, the court did not deny its power, but because of the circumstances of the case, refused to exercise it.[11]

We submit that the circumstances in this case should move this Court to modify or set aside the sentences. The court need not fear that here, as in the *Blockburger* case there "may have been other facts and circumstances before the trial court properly influencing the extent of punishment". The court below acknowledges that the trial judge placed on the record all the grounds on which he based the death sentences (R. 1674). The vice of the sentences imposed on these petitioners lies not only in the grounds he stated publicly (discussed in Point IV above), but as well on his elision of facts within and dehors the record which rationally bear upon the measure of punishment.

Undoubtedly, were the sentences founded on "materially untrue" facts and assumptions, as we have demonstrated in Point IV above, they not only offend due process, but, as well, constitute an abuse of the discretion of the sentencing judge.

For it cannot be forgotten that, in addition, the trial judge disregarded other factors that are ordinarily brought to bear on sentence.

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[11] In any event, if this Court adheres to the view of the lower court that this Court's decision in the *Blockburger* and *Kawakita* cases stand for a denial of power, we press upon this Court that such a construction should be overruled as suggested by the concurring opinion of Judge Frank below (R. 1672-77). See also Hall, *Reduction of Criminal Sentences on Appeal*, 37 Col. L. Rev. 521, 762 (1937).

The conviction of the petitioners was procured on accomplice and professional informer testimony with a patina of circumstantial evidence (R. 1648), against the sworn denials of the petitioners in their own defense (R. 1051-1401). Sufficient evidence to prove guilt beyond a reasonable doubt was entirely lacking without the testimony of these accomplices, who, hopelessly entrapped, consummated deals with the Government to accuse the petitioners and so avoid or mitigate punishment for their malefactions (R. 556-67, 594-608, 715-21, 729-47, 757-61, 780, 784-86, 792-93, 593, 740, 1638). Such a case has been characterized as "weak". *Krulewich* v. *United States*, 336 U. S. 400 (1949); *Berger* v. *United States*, 295 U. S. 78 (1935); *Glasser* v. *United States*, 315 U. S. 60 (1942); *United States* v. *Levi*, 177 F. 2d 827 (C. A. 7th, 1949). Justice Frank, concurring below, suggested consideration of this factor on modification of sentence (R. 1677).

The infirmity of a case built on accomplice testimony, is underscored in relation to these petitioners, when the Government announced that, contrary to the trial testimony, the petitioners were insignificant cogs in the alleged Soviet espionage apparatus. Within a week after the imposition of sentence upon the petitioners, a highly authoritative government report rated Fuchs, May and Greenglass (along with British, Bruno Pontecorvo) as the only important atomic espionage agents, and subordinated the petitioners to a minor place. *Report on Soviet Atomic Espionage*, Joint Comm. on Atomic Energy, 82nd Cong., 1st Sess. (U. S. Gov't Printing Office, 1951), pp. 5-7. *Accord: The Shameful Years*, House Comm. on Un-Am. Activities (U. S. Gov't Printing Office, 1952).

Furthermore, never before in the entire history of the United States has a civil court, either in peace or war, decreed a sentence of death for the crime of espionage (R. 1671). For that most grave of all crimes, treason, only two death sentences have been imposed since the adoption of the Constitution (R. 1671) and no execution

has taken place. In the midst of the last war three persons, and after the close of hostilities five persons were charged with, tried for, and convicted of treason for adherence to an enemy that was despicable to the entire world for a wantonness unparalleled in human history. No one of these was executed for his crime.[12]

In the context of allegedly the same network of Soviet atomic espionage agents, the subject of this case, only prison sentences were meted out: David Greenglass, 15 years (R. 1638); Harry Gold, 30 years (R. 801); Ruth Greenglass, David's wife, a co-conspirator, though not a defendant, never indicted for her crime and presently a free woman (R. 593, 740). The same is true of other convicted Soviet atomic espionage agents: Dr. Klaus Fuchs, in England, 14 years; Allan Nunn May, in England, 10 years. *Report on Soviet Atomic Espionage, op. cit., supra.*

This shocking departure from the American tradition against vengeful punishment, and the inverse disparity between these sentences and the punishment meted out to others, according to the Government, more culpable, marks the magnitude of the abuse of the sentencing judge in the exercise of his discretionary powers.

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[12] *During hostilities: United States* v. *Cramer*, 137 F. 2d 888 (C. C. A. 2d, 1943), rev'd 325 U. S. 1 (45 years and $10,000); *Haupt* v. *United States*, *supra* (life imprisonment and $10,000); *Stephan* v. *United States*, 133 F. 2d 87 (C. C. A. 6th, 1943), cert. den. 318 U. S. 781 (death sentence imposed but not executed).

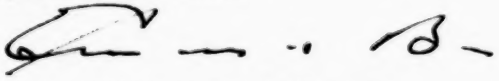
After cessation of hostilities: Chandler v. *United States*, 171 F. 2d 921, cert. den. 336 U. S. 918 (life imprisonment and $10,000); *Best* v. *United States*, 184 F. 2d 131 (C. A. 1st, 1950) (life imprisonment and $10,000); *United States* v. *Burgman*, 87 F. Supp. 568 (D. C., D. C., 1949), aff'd 188 F. 2d 637 (imprisonment, term not mentioned). The two women in the group, better known as "Axis Sally" and "Tokyo Rose", were given minimal prison sentences. *Gillars* v. *United States*, 182 F. 2d 962 (App. D. C., 1950) (10 to 30 years' imprisonment and $10,000); *D'Aquino* v. *United States*, 180 F. 2d 271 (C. A. 9th, 1950) (10 years' imprisonment and $10,000).

The sentence was a product of the abandonment of rational standards. Judicial balance gave way to unjudicial surrender to the political clamor that invaded this case. This Court, the ultimate protector of an accused, helpless against the forces of passion and prejudice, has the responsibility to remedy the irreparable and imminently irrevocable harm suffered by these petitioners.

CONCLUSION

The petition for rehearing should be granted, this Court's order of October 13, 1952, vacated, and a writ of certiorari issued to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,



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OCT 28 1952

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IN THE

Supreme Court of the United States

OCTOBER TERM 1952

No. 112

MORTON SOBELL,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

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2. By intervening decision of substantial effect, the Court of Appeals for the District of Columbia has held that membership in a Communist (Trotzkyist) Party does not of itself establish ground for removal under the Loyalty Program; this decision is, in principle, in conflict with the holding below that mere membership in the Communist Party can be taken as proof of disloyal adherence, without proof of personal acceptance of particular disloyal doctrines by petitioner 5

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Supreme Court of the United States

OCTOBER TERM 1952

No. 112

MORTON SOBELL,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

Your petitioner, Morton Sobell, respectfully prays for a rehearing of the order of this Court, dated October 13, 1952, denying his petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Reasons for Granting Rehearing and Issuing the Writ

1. The Espionage Act was incorrectly construed by the courts below, to permit proof of "treachery and general intent to betray" to be offered as evidence of the essential specific intent to advantage a foreign nation, and as so construed and applied in this case, the Act is in conflict with the Treason Clause of the Constitution.

The Government's brief in opposition to the grant of certiorari herein correctly states, with respect to the statute under which petitioner and his co-defendants were tried and convicted:

> "The statute requires, as a separate element of proof, that the defendant have acted with 'intent or

> reason to believe that [the material taken] is to be used to the injury of the United States or to the advantage of a foreign nation'. Indeed, it was partly because of this explicit requirement that this Court sustained the provision against a challenge of indefiniteness. See *Gorin* v. *United States*, *supra*." (Br. opp. Nos. 111, 112, p. 34).

This "separate element of proof", namely, the intent to advantage a foreign nation, was described in the Solicitor General's brief in opposition herein as the "specific intent of the espionage statute" (Br. opp. p. 34). That the statute was required, as a constitutional matter, to involve proof of such intent, is demonstrated by the very same authority which the Solicitor General cited for the proposition "that Congress had the power to authorize the death penalty for wartime espionage. See *Cramer* v. *United States*, 325 U. S. 1, 45" (Br. opp. p. 39). For at that precise point of the *Cramer* opinion, the Court disclaimed intention to permit Congress to "dispense with the two-witness rule by giving the same offense another name". "Specified acts thought detrimental to our wartime safety" may be proscribed, *provided* the "trial thereof [be] focussed upon defendant's specific intent to do those particular acts" and provided that there be eliminated "the accusation of treachery and general intent to betray which have such passion rousing potentialities" (325 U. S. at p. 45).

The vice of the prosecution below, in this aspect, was that there was offered in the guise of proof of specific intent, none other than "the accusation of treachery and of general intent to betray which have such passion rousing potentialities".

The prosecution:

> "These defendants before you are parties to an agreement * * * to serve the interests of a foreign power which today seeks to wipe us off the face of the earth" (R. 1535).

"They were joined by the common bond of communism and devotion to the Soviet Union" (R. 1529) "worship and devotion to the Soviet Union *over our own Government*" (R. 1535).

The star witness:

"Loyalty to the Soviet cause • • • adhesive relationship • • • adhesive quality • • • adhere • • • adhere" (R. 982-3).

The trial judge:

"Testimony to the effect that the Communist Party is dedicated to furthering the interests of the Union of Soviet Socialist Republic" (R. 1558).

The Court of Appeals:

"An American's devotion to another country's welfare" (R. 1654-5).

There was nothing in the Bentley testimony, purporting to establish the "specific intent" required by the Espionage Act, which revealed more than the "general intent to betray" so eloquently condemned in *Cramer* for its "passion rousing potentialities". And the interpretation of the intent clause of the Espionage Act which this Court expressed in *Gorin* and the Court of Appeals in *United States v. Heine*, 151 F. (2d) 813, cert. den. 326 U. S. 727, is as incompatible with acceptance of a "general intent" in proof of a specific intent as the teaching of the *Cramer* case. For those decisions identified the specific intent to give an "advantage" as being limited to intent to give the type of advantage conveyed by the transmittal of *secret* information.

The *scienter* referred to in *Gorin* is carefully identified in the portion of Mr. Justice Reed's opinion upholding the Espionage Act against a claim of lack of definiteness (312 U. S. at pp. 27-8). The "advantage" referred to in the statute does not mean, as it was there expounded, merely "help" or "assist". A foreign government can be assisted

by the transmittal of published "reports relating to national defense" and yet in such case there would be "no reasonable intent to give an advantage" (id.). Referring to this portion of this Court's opinion, Judge Learned Hand stated in *Heine:*

> "Obviously, this could not mean that it may not be to the advantage of a foreign government to have possession of such information; it can only mean that, when the information has once been made public, and has thus become available in one way or another to any foreign government, the 'advantage' intended by the section cannot reside in facilitating its use by condensing and arranging it" (151 F. (2d) 813, 817).

The requirements of a statute thus authoritatively construed to be limited to intent to give the species of assistance furnished by *secret* information, are not met by proof of a "general intent" to give help, or ideological adherence. Whatever may be the adequacy of such proof of general intent in a treason prosecution, it was not proper, as a matter of law, to constitute proof of the specific intent required in the prosecution of which review is now sought.

And, under the Treason Clause, it would not be permissible so to construe and apply the Espionage Act as to permit compliance with the specific intent clause by proof of general treacherous intent. The Treason Clause is to be construed on the assumption that "more than a few of [the framers] were descendants of those who fled from measures against sedition and its ecclesiastic counterpart, heresy" (*Cramer*, 325 U. S. at p. 13). And its protection is not limited to those accused of adhering to an enemy declared as such by formal action of the Congress of the United States. So ruled an Attorney General who was a contemporary of the framers of the Constitution. The "cold war" and maritime conflict with the France of 1798 produced a ruling from Attorney General Lee that "France is our enemy, and to aid, assist, and abet that nation in her maritime warfare will be treason in a citizen or any

other person within the United States not commissioned by France" (1 Op. Atty. Gen. (Gilpin ed., 1841), pp. 49-50).

Constitutional doctrine of far-reaching effect has been articulated by this Court under the assumption of the existence of a state of "cold war" with the Soviet Union. See *Harisiades* v. *Shaughnessy*, 342 U. S. 580 at p. 591. The equivalence between friend and enemy postulated by *Gorin* (312 U. S. at p. 29); the assumption by the trial judge that it was a "*hostile* nation" (R. 1607) which received aid and comfort from the defendants—an assumption accepted by the Court of Appeals as essential to considering the death sentences imposed below as conscionable (R. 1680)—bring the Treason Clause of the Constitution into play in this case. And that clause has vitality enough to require safeguards against perjury, passion and prejudice which were not employed in the instant prosecution of petitioner for "adhering" to a cold-war "enemy".

2. By intervening decision of substantial effect, the Court of Appeals for the District of Columbia has held that membership in a Communist (Trotzkyist) Party does not of itself establish ground for removal under the Loyalty Program; this decision is, in principle, in conflict with the holding below that mere membership in the Communist Party can be taken as proof of disloyal adherence, without proof of personal acceptance of particular disloyal doctrines by petitioner.

In *Kutcher* v. *Gray* (No. 11172, Oct. 16, 1952) the Court of Appeals for the District of Columbia passed upon a loyalty proceeding affecting an individual who professed membership in the Trotzkyist Communist Party, classified by the Attorney General (without such party having sought judicial review) as seeking to "alter the form of government of the United States by unconstitutional means".

Obviously, the administration of the loyalty program requires a degree of proof of lower quality than that embraced in a prosecution for conspiracy to commit espionage. It is commonly understood that the former is calculated

to eliminate "risks"; the latter to establish individual guilt.

Yet in the *Kutcher* case the Appeals Court of the District of Columbia declined to countenance what was affirmed by the Court of Appeals in the prosecution below: the imputation of "disloyalty", or intent to betray, from mere membership in a group purporting and holding itself out to be a political party, and which so far as any proof contained in this record goes, was never regarded by petitioner, in the entire period of his alleged membership from 1939 to 1941, as other than a legitimate political party.

The Court in *Kutcher* did regard "the Attorney General's designation of the Socialist Workers Party" as "competent evidence in the administrative proceedings against Kutcher" (slip. op. p. 11). But it regarded as "significant" that neither Congress nor the President has done anything to "alter the original scheme of the Loyalty Program" since March 21, 1947; it has always established "disloyalty to the Government" as the bar to employment *"rather than membership or activity in a designated organization"* (slip. op. p. 9). Most persuasive of this connection was the letter of Attorney General (now Mr. Justice) Clark, of November 24, 1947, to the Chairman of the Loyalty Review Board, transmitting his list of subversive organizations:

> "In connection with the designation of these organizations I wish to reiterate, as the President has pointed out, that *it is entirely possible that many persons belonging to such organizations may be loyal to the United States.*" (Emphasis supplied.)

This Court has often cautioned that its denial of certiorari is not to be construed in the remotest degree as a decision on the merits, or as containing any intimation as to what its decision on the merits might be, were the writ to issue. The issues raised by the petition denied herein are of a character that make it difficult to comprehend how errors as grave as those involved in the handling of the issue of the significance of mere Communist affilia-

tion could be permitted to remain undisturbed. The United States Attorney told the jury that "this case is one of the most important that has ever been submitted to a jury in this country" (R. 1512). Factors which account for limitation of the burden of this Court by the cautious exercise of certiorari jurisdiction in the routine criminal case, cannot be present in a case so characterized.

The Solicitor General's brief in opposition to *certiorari* here conceded the general invalidity of employment of evidence of propensity (Br. opp. p. 33). It was further conceded, in effect, that such inflammatory evidence as introduced below would be inadmissible where the issue is one of "general criminal intent". But the distinction attempted to be drawn in the brief in opposition to certiorari between admissibility of proof of propensity to show "general" intent on the one hand, or to show "specific intent" on the other, could have no bearing on whether proof may be made by *imputation alone* of a guilty intent in a case such as the present one.

The question of the permissible scope and area of proof by association or imputation of a criminal intent claimed to be shown by past Communist affiliation is one of the most pervasive and significant problems of federal evidence in the difficult times through which we are now passing. The difference in result to be found in the *Kutcher* case, and in *Commonwealth* v. *Peay*, 369 Pa. 72, 85 Atl. (2d) 426, as opposed to the approach of the Courts below, insistently calls for the exercise of certiorari jurisdiction in this case.

3. The actual degree of culpability of petitioner, even if the one witness against him be believed, is so slight as to render the sentence imposed upon him wholly arbitrary, and presents occasion for review of the issue of the power of federal appellate courts to modify criminal sentences: the question deferred in *Kawakita* v. *United States*, 343 U. S. 717, 744-745.

This petitioner has suffered, at every stage of the criminal proceeding against him, from the subordination of the issues peculiar to his case, to those issues presented by the trial, conviction, appeal and petition for review by the co-defendants Rosenberg, the alleged "atom spies". From the time of his arrest, and the coupling of that event with the prosecution of the Rosenbergs, he was stamped on the mind of the community from which the jurors were drawn as an "atom spy"; even upon denial of certiorari, the Solicitor General having submitted a single brief in opposition, the denial in his case was coupled with that of his co-defendants, instead of being set out by separate order.

Petitioner now faces thirty years imprisonment—in effect a living death—although the Court of Appeals divided as to whether his conviction should have been affirmed, and was unanimous in its view that if "two conspiracies were proved, then prejudicial error has been committed, for Sobell was jointly tried with major atomic energy spies" (R. 1664). It first became apparent at the close of the prosecution's case—and was ultimately stated by the Trial Court that petitioner was not an "atom spy". This Court has declined to review his contention that on such facts he was so deeply stained and unfairly impugned as to have made it impossible for him to get dispassionate consideration by the jury. In addition to this ground for certiorari asserted in the original petition, which we believe to be meritorious, we now make the contention: not hitherto advanced here in behalf of the petitioner, although raised

in the Circuit Court[1] that by no rational view of the sentencing power can the sentence of thirty years imposed upon him be justified. Having due regard to the maximum extent of his complicity under any aspect of the record, and the factors, or rather, absence of any factors advanced by prosecutor or Court at the time of imposition of sentence, there can not be any doubt that if tried and sentenced separately, a prison term of five years—perhaps seven—would be regarded as the most harsh permissible in the light of the circumstances of the case and the history of the actual exercise of the sentencing power under former 50 U. S. C. §32. The departure—the infliction of the maximum term of imprisonment—can be accounted for only in the context of a sentencing proceeding wherein the overwhelming fact of the imposition of the death sentence on co-defendants impelled the trial court to buttress that sentence by wholly unjudicial severity to petitioner. The gratuitous recommendation against parole only serves to reinforce this view.

In the circumstances, the Court of Appeals should have been free to modify the sentence. We urge that a proper setting exists here for this Court to declare the existence of that freedom: to hold, as it is entirely permissible to do, that 28 U. S. C. 2106 means what it says, and that in a proper case, a power to "modify" exists. The Court of Appeals took the view that "the Supreme Court alone is in a position to hold that Sec. 2106 confers authority to reduce a sentence which is not outside the bounds set by a valid statute (R. 675-6). Otherwise, it would have given

[1] Sobell's brief in the Circuit Court states, p. 31n:

"We respectfully submit that the learned court below was led into the same prejudiced attitude towards Sobell as that to which the prosecutor had successfully brought the jury by the joint trial. For the extreme sentence of thirty years' imprisonment—with gratuitous recommendation against parole—overshadowed though it may be by the fate of the Rosenbergs, cannot be rationally explained by reference to the worst that may be believed of Sobell, taking everything that Elitcher testified to as true and meaningful."

Section 2106 "serious consideration." There is nothing in the casually tossed-off dictum in *Blockburger* v. *United States,* 284 U. S. 299, 305, to prevent the result we urge; and it was made quite clear in *Kawakita* v. *United States,* 343 U. S. 717, that the question is for this Court an open one.

The Court of Appeals stated (R. 1674, n. 22) that "determination of a proper sentence—no easy task" should involve "a host of factors, including the unique fact of the particular defendant's life, conduct and character". But the sentence imposed on this petitioner was imposed without reference to a recommendation from the U. S. Attorney or probation report (R. 1619-20). It is obvious from the Record that it was based on but one factor: the gravity of the alleged offense of petitioner's co-defendants. The prejudice which we contend affected the jury, by reason of the unfair joint trial, seems likewise to have infected the Trial Judge.

CONCLUSION

The first and third grounds advanced herein for issuance of the writ are substantial, although not hitherto advanced in behalf of petitioner. The second ground is based on an intervening circumstance of substantial effect. It is respectfully urged that the Court's order herein of October 13, 1952, denying certiorari be vacated, on rehearing, and the petition granted.

Dated: October 28, 1952.

Respectfully submitted,

HOWARD N. MEYER,
Counsel for Petitioner,
205 West 34th Street,
New York 1, New York.

Certificate

The undersigned, HOWARD N. MEYER, counsel for MORTON SOBELL, hereby certifies that this petition is presented in good faith and not for delay, and that it is restricted to grounds specified in Rule 33(2) of the Rules of this Court.

HOWARD N. MEYER.

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1952

No. 111

JULIUS ROSENBERG and ETHEL ROSENBERG,
Petitioners,

v.

UNITED STATES OF AMERICA.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION OF NATIONAL LAWYERS GUILD FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

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Supreme Court of the United States

OCTOBER TERM, 1952

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To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The National Lawyers Guild respectfully moves this Court pursuant to Rule 27, paragraph 9(C), of the Rules of this Court, for leave to file a brief in this case as *amicus curiae*.*

The National Lawyers Guild is a bar association of national membership which is and has long been dedicated to the aim, among others, of helping to defend constitutional rights and liberties.

*Consent of the parties has not been sought since we have been advised of the standing rule of the Solicitor General not to consent to such applications since the adoption of the Amended Rule 27.

Because it believes that this case raises novel and important issues as to the scope of constitutional protection and as to the powers and jurisdiction of the Federal Appellate Courts which should be reviewed by this Court, and which have not been discussed or have not been adequately discussed by petitioners, it seeks leave to present its views in the belief that by so doing it may assist this Court.

The precise issues raised herein which we seek leave to argue more fully as *amicus curiae* are these:

1. Whether Sections 32(a) and 34 of Title 50, United States Code (now Title 18, United States Code, Section 794) as applied and construed in this case do not constitute an unconstitutional extension of the constitutional definition of treason (Article III Sec. 3). Petitioners rely, in arguing a closely related point, primarily on conduct of the prosecutor and trial judge. As indicated below we see the issue in a different light.

2. Whether this Court has the power to modify the death sentence meted out to petitioners Rosenberg, and whether, under the circumstances of this case, this sentence should be modified. The Petitioners do not discuss this point in their petition for certiorari.

Brief Statement of Argument Intended to be Made

1. The Rosenbergs were indicted and tried under the Espionage Act for allegedly giving aid by transmitting information relating to the "national defense" to a foreign country concededly not an enemy of the United States. It was not charged that the information allegedly transmitted was transmitted with intent to harm the United States. Proof of political connection with a then friendly foreign power was accepted on the basis of testimony tending to show a propensity for adherence to the said foreign power.

Article III Section 3 of the Constitution provides:

> "Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

The purpose of this restrictive definition is clear. As was stated by this Court in *Cramer* v. *United States*, 325 U. S. 1, 65 S. Ct. 918,

> "The temper and attitude of the Convention toward treason prosecutions is unmistakable. It adopted every limitation that the practice of governments had evolved or that politico-legal philosophy to that time had advanced. * * * The framers combined all of these known protections and added two of their own which had no precedent. *They wrote into the organic act of the new government a prohibition of legislative or judicial creations of new treasons* * * *." (Emphasis supplied.)

The history of English law was replete with the attempts by judicial innovation of "constructive treason" to circumvent limitations placed upon treason prosecutions to punish political heresy.

> "Nothing had brought so much disgrace on the councils of government, and on the administration of justice, nothing more forcibly spoken the necessity of a great change, than the prosecutions for treason during the latter years of Charles II, and in truth during the whole course of our legal history. The statutes of Edward III and Edward VI, almost set aside by sophistical constructions, required the corroboration of some more explicit law; and some peculiar securities were demanded for innocence against that conspiracy of the court with the prosecutor, which is so much to be dreaded in all trials for political crimes." 2 Hallam, Constitutional History of England (1827) P. 509 (cited in *Cramer* v. *U. S.* 65 S. Ct. at p. 932).

The Treason clause of the Constitution, based upon a report by the Convention Committee on Spies, is much more restrictive than the English Treason Act (25 Edw. III Stat. 5, Chap. 2) because it was

> "framed by men who, as we have seen, were taught by experience and by history to fear abuse of the treason charge almost as much as they feared treason itself" (*Cramer Case*, supra, P. 928).

The fact that the Treason clause was drafted by the Committee on Spies may well indicate that espionage was considered as falling within the scope of the Treason clause. The Constitutional Convention

> "adopted every limitation that the practice of governments had evolved or that political legal philosophy to that time had advanced" (*Cramer Case*, supra, P. 929).

If the charge here had been that the Rosenbergs had transmitted information "to the advantage of" an enemy of the United States, the prosecution certainly couldn't get around the two witness rule. As stated in the *Cramer Case*,

> "Of course, we do not intimate that Congress could dispense with the two witness rule merely by giving the same offense another name" (pp. 939, 940).

In the instant case, the two witness rule was not observed. The basis of the charge was "advantage to a foreign power" and that power *not* an enemy of the United States. To put the petitioners in a worse position with regard to safeguards against injustice than a person accused of the treason of giving aid to an enemy of our country seems untenable in the light of the clear intent of Article III, Section 3.

Rufus King, one of the members of the Constitutional Convention, in commenting on a proposed treason law introduced in Congress by Senator Giles as an answer to the Burr decision, wrote:

"The limitation which the Constitution establishes on the subject of Treason, proceeded from a principle, which will readily be approved by every man who is acquainted with the vindictive spirit that, at different times in the History of England, has animated the ascendant faction against their political adversaries. If the proposed law on the subject of Treason neither enlarges nor lessens its Constitutional definition, the law is unnecessary; *if it does the one or the other, it is unconstitutional* * * *." Quoted in Hurst, "Treason in the United States" 58 Harvard Law Review 415 (1945). (Emphasis supplied.)

This becomes particularly important in this case because the "evidence" of intent to give aid and comfort was grounded on the political convictions of the Rosenbergs. The trial judge's remarks on sentencing the Petitioners makes it entirely clear that the existence of extreme international tension was a large factor influencing at least the magnitude of the sentences administered. The record discloses that though the government indicted under the Espionage Act, it proceeded to try the defendants as for treason. And this in a highly surcharged atmosphere of "political heresy" and vindictiveness. Under these circumstances it seems appropriate to describe the prosecution as one for "constructive treason".

The essence of the point intended to be made here is that to the extent that the statute is applicable or is attempted to be applied to the case of alleged aid to a foreign power in relation to matters concerning the "national defense" a crime is involved which so closely approximates the charge of treason that all of the factors and considerations which caused the founders to include safeguards in Article III, Section 3 against unjust prosecutions apply to it with equal or even greater force.

Surely it could make no difference to a victim of injustice if he receive a death sentence for aiding a foreign power, not an enemy, or a foreign power which is an enemy. And it seems obvious that a statute applicable to aid to any foreign power in war time or in peace time, even an ally, in

time of war as in the instant case, is adopted to greater abuse than a statute applicable only to aid given an enemy in time of war.

It is not surprising that the trial took on the atmosphere of a treason trial, and that the defendants were referred to as "Traitors" because such a statute is inherently conducive to such an outcome.

The Court of Appeals, in rejecting a similar contention on rehearing, relied on *Ex Parte Quirin*, 317 U. S. 1, stating:

> "In the *Quirin* case, the absence of uniform was an additional element, essential to Haupt's non-treason offense although irrelevant to his treason; in the *Rosenbergs'* case, an essential element of treason, giving aid to an 'enemy' is irrelevant to the espionage offense."

It is submitted that this reasoning begs the question. The *Quirin* case involved not only a trial under the Articles of War, but involved a crime that required a distinctly different and *greater* measure of proof. In the *Quirin* case it was necessary to establish that the defendants had the status of enemy belligerents, that they passed and went beyond our lines, without uniform. These are all elements of proof in addition to those required by the Treason Article. In the instant case the crime charged involved a lesser measure of proof in that it was unnecessary to show that the foreign power aided was an enemy.

Moreover, from time immemorial, enemy belligerents have been tried under the Articles of War. The fact that certain of the enemy belligerents were citizens of the United States would not give them immunity from prosecution as such belligerents.

It is submitted that the interests of justice, and a fair interpretation of the intent of Article III, Section 3, require that upon any such prosecution under a statute which defines a crime so similar to treason and so adapted to abuse, a measure of proof equal to that prescribed by Article III, Section 3, shall be required. Since the trial

did not give the instructions constitutionally required
reason trial, reversible error was committed.

We do not discuss the proposition that the punish-
meted out here is in violation of the Eighth Amend-
prohibiting "cruel and unusual punishments". This
cussed adequately in petitioners' brief.

raise the question here of this Court's power to mod-
is sentence of death, under Title 28 United States
Section 2106, because of the compelling reasons here
odification of the sentences of death.

tion 2106 of Title 28 provides:

"The Supreme Court or any other court of appellate
urisdiction may affirm, modify, vacate, set aside or
everse any judgment, decree, or order of a court law-
ully brought before it for review, and may remand
he cause and direct the entry of such appropriate
udgment, decree or order, or require such further pro-
eedings to be had as may be just under the circum-
tances."

Court of Appeals, in affirming the conviction herein,
l the power to exercise such jurisdiction, stating:

"Unless we are to over-rule sixty years of undeviat-
ng federal precedents, we must hold that an appellate
ourt has no power to modify a sentence" (Frank, J.,
95 F. 2nd at page 604).

lge Frank, for himself, then discusses the various de-
s in light of Section 2106 (at pp. 605, et seq.). He
:

"No decision by the Supreme Court or any federal
ourt of appeals seems to have cited or considered this
tatute in passing on the question of the power to re-
uce a sentence when a conviction is affirmed."

lge Frank points out the similarity in wording of Sec-
2106 and of various state statutes wherein state ap-
e courts have found authority for modification, and
footnote (30) states:

> "Where an upper court has such power, the criterion used to determine whether a sentence is too harsh would seem to be that court's own judgment—not the 'common conscience'.
>
> "It has been held that, in such circumstances, the upper court may consider, for such purposes, the quality of the evidence on which the verdict rests. See Fritz v. State, 8 Okl. Cr. 342, 128 P. 170. So here, had this court such power, it might take into consideration the fact that the evidence of the Rosenbergs' activities after Germany's defeat (as well as of their earlier espionage activities) came almost entirely from accomplices."

We could not point out more strongly than does Judge Frank that the question of the appellate court's power to modify sentences, under Section 2106 of Title 18 is "res nova". In light of the discussion by Judge Frank, and his indication that he might have favored a reduced sentence were this authorized, this is a serious question of right that should be examined and decided by this Court. If the Federal appellate courts have the power to modify the sentence in this case, then certainly the defendants should be accorded that review.

This is especially true in light of this Court's statement that:

> "In the century and a half of our national existence not one execution on a federal treason conviction has taken place." (*Cramer Case*, supra, p. 930.)

This has also proved true of all treason and espionage trials since the *Cramer* case was decided.

It is respectfully submitted that, in light of the grave questions stated above, this Court should grant the motion for leave to file an *amicus curiae* brief herein, and grant certiorari to the petitioners herein.

Respectfully submitted,

ROBERT J. SILBERSTEIN,
40 Exchange Place,
New York, N. Y.,
Counsel for National Lawyers Guild.

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FILED
NOV 7 1952
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

Nos. 111 and 112

JULIUS ROSENBERG AND ETHEL ROSENBERG,
Petitioners,

MORTON SOBELL,
Petitioner,

vs.

UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE.*

ROYAL W. FRANCE,
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104 East 40th Street,
New York 16, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

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JULIUS ROSENBERG and ETHEL ROSENBERG,

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UNITED STATES OF AMERICA.

Motion for Leave to File Brief and Brief *Amici Curiae.*

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for the signers of the accompanying brief as *amici curiae* and for approximately 50,000 other Americans who have specifically authorized, by their signatures, the inclusion of their names in this brief (see Exhibit A, form of authorization) and whose names are here appended (see Exhibit B), respectfully moves this Honorable Court for permission to file said brief. Permission to file this brief has not been sought from the Solicitor General.

The undersigned are of the opinion that in a case unprecedented in the peace time history of the United States, in which two of the petitioners have been sentenced to

death and one to a thirty year prison term, although hitherto lesser sentences were given to actual confessed or convicted war time traitors and where so many citizens feel such grave doubts lest the emotions of our times may have affected the verdicts, a hearing of the case by this Court would be highly desirable.

Wherefore, it is respectfully requested that this Honorable Court grant this motion for leave to file the annexed brief *amici curiae*.

ROYAL W. FRANCE,
Attorney for *Amici Curiae*,
104 East 40th Street,
New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

Nos. 111 and 112

JULIUS ROSENBERG and ETHEL ROSENBERG,

Petitioners,

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vs.

UNITED STATES OF AMERICA.

Motion for Leave to File this Brief as Friends of the Court.

We, the undersigned citizens of the United States, jointly and severally, respectfully ask leave of the Court to file this brief as friends of the Court on behalf of the petitioners above named.

Brief *Amici Curiae.*

We are deeply desirous that this Court should reconsider its refusal to review the case of the Rosenbergs and Morton Sobell. Approximately fifty thousand other Americans who are equally distressed have authorized the inclusion of their names in a petition to this Court to consider the case. Their signatures are being submitted herewith. Where so many people have signed such a petition there must be many more of our fellow citizens who

are deeply concerned over the natu
afflicted with doubts as to whether
carrying them out. Recogni ing, as
be tried not by the general public
law in the Courts, we nevertheless
thousands of our fellow citizens in
to allow the extreme penalty to b
before accepting the appeal and rev

In support of this petition we p
doubts held by these countless Ame
of the verdict and sentence and the
should review the case.

We are not demanding that the
we insensible of the danger of esp
times of trouble; but we are askin
Ethel Rosenberg and Morton Sob
guilty beyond reasonable doubt and
tent evidence of the crime of whic
whether, if the Rosenbergs go to
doubts will linger to harass and
people. We are alarmed to think
emotional tension, cold war and fear
might put a period to civilization
suffer for a crime which they
punished beyond their desert.

We ask first of all if the trial
Rosenberg and Morton Sobell was
in an atmosphere in which an imp
the evidence was possible? The fu
whether the Rosenbergs and Sobell
has deeply troubled thousands of
tain this is the request and the onl
this Court. It is, we admit, a grave
Court already crowded beyond its
review cases from lower tribunals sa
circumstances. This case we carnes
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ie but by due process of
ss join with these many
in urging this Court not
be exacted in this case
reviewing the case.

present our view of the
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he reasons why this Court

he guilty go free, nor are
espionage and treason in
sking whether Julius and
Sobell were really proved
nd on relevant and compe
hich they were accused or
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hink that in this time of
fear of an atomic war that
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trial of Julius and Ethel
was fair. Was it conducted
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of Americans. To ascer
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als save under exceptional
earnestly believe is excep
or shameful death for a

father and mother of young children who have never before been accused even of misdemeanor and of the living death of thirty years imprisonment. More than this, the highly emotional atmosphere in which the case was tried in this time of cold war and fear made it possible for the prosecution to point to the alleged political beliefs of the Rosenbergs and Sobell as evidence of guilty intent or proof of motive thus bringing the doctrine of guilt by association into a capital case in a highly inflammatory way.

When in such circumstances, two Americans of hitherto good repute are given an unprecedented sentence, is it too much to ask the highest tribunal of the nation at least to inquire into the facts of this trial so as to be sure and to reassure the American public and the world that there has been no miscarriage of justice? Never before in time of peace or war has a civil court condemned accused persons to death on a charge like this in the United States of America. On the contrary, have we not been quick to condemn executions in other countries where we have had the suspicion that the political opinions of the accused might have clouded the verdicts? This in itself should give us pause to make certain for our own peace of mind and our reputation in the world that there is no reasonable doubt of guilt and that the customary legal safeguards were present in the trial. We are not suggesting a public opinion test for judicial action but are pointing out that this is no ordinary case but rather one whose wide implications give it extraordinary importance.

Again, the use of the testimony of self confessed criminals, such as was admitted in this case, although such testimony is certainly inescapable at times, must always be received with reserve. This is especially true in a capital case where the informer testimony without which, as the Court of Appeals itself stated the convictions doubtless could not stand, may well have been influenced, if not induced, by their belief that by testifying they would escape dire punishment or secure immunity or mitigation of sen-

tence. It surely is not without significance that the Greenglasses, self confessed criminals, have been let off, one altogether and the other with a relatively light sentence while the Rosenbergs, protesting their innocence, are under sentence of death.

We must ask whether the crime for which the death and thirty year sentences were imposed was ever actually committed. The trial judge stated that if the espionage is committed in time of war the punishment might be death or thirty years and then stated that at the time the alleged conspiracy commenced we were at war. But we were not at war with the Soviet Union then or since. If espionage had been committed for England with whom we were not at war but allied would it have been in accordance with the intent of the statute to hold that we were at war?

Moreover, the extreme penalty was imposed because the trial judge believed, as he stated that the conspiracy had put the A bomb into the hands of the Russians, caused the Communist aggression in Korea and "who knows but that millions of innocent people may pay the price of your treason." Is discretion in imposing the death penalty proper when the expressed reasons for exercising the discretion are, to say the least, dubious? Was the information alleged to have been disclosed really a vital, atomic secret in any true sense? Were competent scientists called to prove that such secrets could have been acquired by a man of such limited scientific education and knowledge as the informer or transmitted as claimed by the prosecution? Does the fact that the man Fuchs was convicted in England as the person responsible for the Russians getting the secret, that he was given a prison term and that he was a scientist have any bearing on the expressed thoughts of the trial judge in imposing the extreme penalty? Were these matters sufficiently considered in the trial? The jury's verdict and the judge's death sentence were based directly on the informer's meagrely corroborated testimony that vital atomic information had been transmitted.

We are not asking this Court to review the weight of evidence. What we are asking is that the Court consider whether in the light of the sort of evidence that was produced and was not produced by the prosecution, the sentence may not have been unduly influenced by political prejudice and hysteria. If that possibility exists we feel that this case by reason of its implications and of the penalties imposed is of the sort that warrants review by this Court.

These are difficult times for all Americans; for all the world; but there should be no suspicion of bias or indifference or that we are vindictively punishing a crime such as this with the unprecedented sentence of death. Subsequent proof, if it ever came, of innocence, if it came too late to save these lives, would forever haunt us if we had failed to go the second mile.

Under all the circumstances of this case, cannot this Court at least assure us that Julius and Ethel Rosenberg and Morton Sobell will receive the fullest possible hearing? Otherwise, grave doubts as to the justice of the case will persist and multiply and the innocent may be punished irretrievably. We firmly believe, as the moral sense of mankind has agreed for centuries, that it would be far better that ten guilty persons escaped punishment than that one couple, if innocent, should by any legal mischance, be sent to their deaths.

Dated: November 2, 1952.

Respectfully submitted,

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EXHIBIT A

AMICUS BRIEF * IN THE ROSENBERG CASE

WE BELIEVE that the trial of Julius and Ethel Rosenberg and Morton Sobell on a charge of conspiring to commit espionage, which resulted in death sentences for the Rosenbergs and a 30 year sentence for their co-defendant, lacked guarantees of fairness which all Americans have a right to expect under the Constitution.

WE BELIEVE that the Prosecutor and Trial Judge permitted fear and prejudice to dominate the trial by 1) attributing to the defendants social beliefs which are today the target of virtually every public tribunal, and 2) attributing to them reversals and casualties suffered in Korea.

WE BELIEVE that transient political and social passions have no place in our courts, that to deprive even one American of the right to a fair trial is to injure the rights of all Americans.

WE THEREFORE authorize the inclusion of our names in an Amicus Brief to the Supreme Court of the United States, petitioning that the verdicts and sentences be set aside, and that a new trial be ordered based on Constitutional guarantees of impartiality and fairness in accordance with the best traditions of American justice.

Name	*Address*	*City*	*State*

Please return to: NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE, 1050 6th Avenue, New York, N. Y., BR 9-9695.

Name of person returning this Amicus.....

Address.....City and State.....Organization.....

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* Signers of an Amicus Brief act as friends of the court, petitioning because they believe an important principle is at stake.